PUBLIC VERSION

UNITED STATES – ANTI-DUMPING MEASURE ON OIL COUNTRY TUBULAR GOODS FROM ARGENTINA

(DS617)

RESPONSES OF THE UNITED STATES OF AMERICA TO THE PANEL'S QUESTIONS FOLLOWING THE FIRST SUBSTANTIVE MEETING OF THE PANEL WITH THE PARTIES

July 26, 2024

TABLE OF REPORTS

Short Title	Full Case Title and Citation
China – Broiler Products	Panel Report, *China – Anti-Dumping and Countervailing Duty Measures on Broiler Products from the United States*, WT/DS427/R and Add.1, adopted 25 September 2013
China – GOES (AB)	Appellate Body Report, *China – Countervailing and Anti-Dumping Duties on Grain Oriented Flat-Rolled Electrical Steel from the United States*, WT/DS414/AB/R, adopted 16 November 2012
EC – Fasteners (China) (Panel)	Panel Report, *European Communities – Definitive Anti-Dumping Measures on Certain Iron or Steel Fasteners from China*, WT/DS397/R, adopted 28 July 2011, as modified by Appellate Body Report, WT/DS397/AB/R
EC – Hormones (AB)	Appellate Body Report, *EC Measures Concerning Meat and Meat Products (Hormones)*, WT/DS26/AB/R, WT/DS48/AB/R, adopted 13 February 1998
EC – Tube or Pipe Fittings (AB)	Appellate Body Report, *European Communities – Anti-Dumping Duties on Malleable Cast Iron Tube or Pipe Fittings from Brazil*, WT/DS219/AB/R, adopted 18 August 2003
Thailand – H-Beams (Panel)	Panel Report, *Thailand – Anti-Dumping Duties on Angles, Shapes and Sections of Iron or Non-Alloy Steel and H-Beams from Poland*, WT/DS122/R, adopted 5 April 2001, as modified by Appellate Body Report WT/DS122/AB/R
US – Ripe Olives from Spain (Panel)	Panel Report, *United States – Anti-Dumping and Countervailing Duties on Ripe Olives from Spain*, WT/DS577/R, adopted 20 December 2021
US – Softwood Lumber V (Panel)	Panel Report, *United States – Final Dumping Determination on Softwood Lumber from Canada*, WT/DS264/R, adopted 31 August 2004, as modified by Appellate Body Report WT/DS264/AB/R
US – Wool Shirts and Blouses (AB)	Appellate Body Report, *United States – Measure Affecting Imports of Woven Wool Shirts and Blouses from India*, WT/DS33/AB/R, adopted 23 May 1997, and Corr. 1

TABLE OF EXHIBITS

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U.S. First Written Submission	
USA-01	19 C.F.R. § 351.204
USA-02	Applicants' Letter, "Oil Country Tubular Goods from Argentina, Mexico, the Republic of Korea, and Russia: Response to General Issues Questionnaire" (Oct. 12, 2021) (excerpts)
USA-03	Tenaris Bay City, Inc., IPSCO Tubulars Inc., Maverick Tube Corporation, and Tenaris Global Services (U.S.A.) Corporation, "Oil Country Tubular Goods from Argentina, Mexico, the Republic of Korea, and Russia: Comments on Petitioners' Second General Issues Questionnaire Response" (Oct. 22, 2021) (excerpts)
USA-04	Applicants' Letter, "Petitions for the Imposition of Antidumping and Countervailing Duties: Oil Country Tubular Goods from Argentina, Mexico, the Republic of Korea, and Russia," Vol. 1, Part 3 (Oct. 6, 2021) (excerpt)
USA-05	USITC Blank U.S. Purchaser Questionnaire from OCTG investigations (excerpt)
USA-06	19 C.F.R. §§ 351.102, 351.301
USA-07	Definition of "As the Case May Be", *Collins*, http://www.collinsdictionary.com/dictionary/english/as-the-case-may-be (accessed Apr. 23, 2024)
USA-08	Definition of "Case", *Oxford Learner's Dictionaries*, https://www.oxfordlearnersdictionaries.com/us/definition/american_english/case_1 (accessed Apr. 23, 2024)
USA-09	*Certain Oil Country Tubular Goods from India, Korea, The Philippines, Saudi Arabia, Taiwan, Thailand, Turkey, Ukraine, and Vietnam*, Inv. Nos. 701-TA-499-500 and 731-TA-1215-1223 (Preliminary), USITC Pub. No. 4422 (Aug. 2013) (excerpt)
USA-10	*Oil Country Tubular Goods from Argentina, Austria, Italy, Japan, Korea, Mexico, and Spain*, Inv. Nos. 701-TA-363-364 and 731-TA-711-717 (Preliminary), USITC Pub. No. 2803 (Aug. 1994) (excerpt)

USA-11	*Oil Country Tubular Goods from India, Korea, Turkey, Ukraine, and Vietnam*, Inv. Nos. 701-TA-499-500 and 731-TA-1215-1216, 1221-1223 (Review), USITC Pub. 5090 (Jul. 2020) (excerpt)
USA-12	*Oil Country Tubular Goods from Argentina, Mexico, Russia and South Korea*, Inv. Nos. 701-TA-671-672 and 731-TA-1571-1573, Revised and Corrected USITC Hearing Transcript (Sept. 22, 2022) (excerpt)
USA-13	*Oil Country Tubular Goods From the Republic of Korea: Final Affirmative Countervailing Duty Determination*, 87 Fed. Reg. 59,056, 59,057 (Dep't of Commerce Sept. 29, 2022)
USA-14	USITC Blank U.S. Importer Questionnaire from OCTG investigations
USA-15	TMK Post-Conference Brief
USA-16	*Certain Preserved Mushrooms from Chile*, Inv. No. 731-TA-776 (Final), USITC Pub. 3144, at 14-15 (Nov. 1998)
USA-17	*Proclamation 9705: Adjusting Imports of Steel Into the United States*, 83 Fed. Reg. 11,625 (Mar. 15, 2018)
USA-18	*Certain Oil Country Tubular Goods From India, the Republic of Korea, Taiwan, the Republic of Turkey, and the Socialist Republic of Vietnam: Antidumping Duty Orders; and Certain Oil Country Tubular Goods From the Socialist Republic of Vietnam: Amended Final Determination of Sales at Less Than Fair Value*, 79 Fed. Reg. 53,691 (Dep't of Commerce Sept. 10, 2014)
USA-19	*Oil Country Tubular Goods from Argentina, Mexico, Russia and South Korea*, Inv. Nos. 701-TA-671-672 and 731-TA-1571-1573 (Preliminary), USITC Pub. No. 5248 (Nov. 2021)
USA-20	Definition of "Significant," The New Shorter Oxford English Dictionary, 4th ed., L. Brown (ed.) (Clarendon Press, Oxford, 1993), Vol. 2, p. 2860
USA-21	19 U.S.C. § 1862
USA-22	15 C.F.R., Part 705
USA-23	WTO Council for Trade in Goods, Minutes of the Meeting of the Council for Trade in Goods, 10 November 2017, G/C/M/130, at 26-27 (Mar. 22, 2018)
USA-24	U.S. Department of Commerce, "The Effect of Imports of Steel on the National Security: An Investigation Conducted under Section 232 of the Trade Expansion Act of 1962, as Amended," at 1-61 (Jan. 11, 2018)

USA-25	Presidential Proclamation 9759 of May 31, 2018, "Adjusting Imports of Steel into the United States," 83 Fed. Reg. 25857-25860
USA-26	Petitioners' Public Posthearing Brief, Exhibits. 3-4
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USA-27	Uruguay Round Agreements Act, Pub. L. 103-465 (Dec. 8, 1994), 108 Stat. 4809 (excerpt)
USA-28	*Oil Country Tubular Goods from Argentina, Austria, Italy, Japan, Korea, Mexico, and Spain*, Inv. Nos. 701-TA-363-364 and 731-TA-711-717 (Final), USITC Pub. 2911 (Aug. 1995) (excerpt)
USA-29	*Certain Seamless Carbon and Alloy Standard, Line, and Pressure Steel Pipe from Argentina, Brazil, Germany, and Italy*, Inv. Nos. 701-TA-362 and 731-TA-707-710 (Final), USITC Pub. No. 2910 (July 1995) (excerpt)
USA-30	*Certain Carbon Steel Butt-Weld Pipe Fittings from France, India, Israel, Malaysia, The Republic of Korea, Thailand, The United Kingdom, and Venezuela*, Inv. Nos. 701-TA-360-361 and 731-TA-688-695 (Final), USITC Pub. No. 2870 (Apr. 1995) (excerpt)
USA-31	Trade and Tariff Act of 1984, Pub. L. 98-573 (Oct. 30, 1984), 98 Stat. 2948 (excerpt)
USA-32	USITC Blank U.S. Purchaser Questionnaire from OCTG investigations (full)
USA-33	USITC Blank U.S. Producer Questionnaire from OCTG investigations (full)
USA-34	USITC Blank U.S. Importer Questionnaire from OCTG investigations (full)
USA-35	Application, Volume I, at Exhibits I-11, I-14 (Oct. 6, 2021)
USA-36	*The New Shorter Oxford English Dictionary*, 4th ed., L. Brown (ed.) (Clarendon Press, Oxford, 1993) (excerpt)
USA-37	Statement of Administrative Action to the Uruguay Round Agreements Act, H.R. Rep. No. 103-316, Vol. I (1994) (excerpt)
USA-38	*Oil Country Tubular Goods from Argentina, Mexico, Russia and South Korea*, Inv. Nos. 701-TA-671-672 and 731-TA-1571-1573, Revised and Corrected USITC Hearing Transcript (Sept. 22, 2022) (additional excerpt)

I. CROSS-CUTTING

Question 1 (To both parties): In support of some of their arguments, the parties have submitted exhibits in which information that appears to be at the heart of the parties' arguments is redacted. In your view, what are the rules and principles that, in such instances, should guide the Panel's assessment of whether the authorities' establishment of the facts was proper and their evaluation of the facts was unbiased and objective?

Response:

1. As an initial matter, it is Argentina's burden to make a *prima facie* case that the United States acted inconsistently with WTO obligations with regard to the determinations by the U.S. Department of Commerce ("USDOC") and U.S. International Trade Commission ("USITC").[1] The United States considers that Argentina has not satisfied its burden in this dispute.

2. In assessing Argentina's claims that the USDOC's and the USITC's establishment of the facts was not proper and their evaluation of the facts was not unbiased and objective, the Panel should consider Argentina's arguments and evidence. Argentina relied on public information in asserting its claims and arguments.[2] That is the particular evidence that the Panel needs to consider in addressing Argentina's arguments.

3. Likewise, the United States has relied on public information in asserting its defenses against Argentina's claims, given the particular nature of Argentina's arguments. The Panel should consider the arguments and public information that we have proffered to rebut Argentina's arguments (that is, should the Panel consider that Argentina has satisfied its burden of making a *prima facie* case).

4. With regard to the USDOC's assessment of whether the application was made by or on behalf of the domestic industry, Argentina's arguments primarily center on the nature of the information that the USDOC relied on in making that assessment, for example, whether the data were "outdated" or "anomalous" given certain factual circumstances surrounding 2020 in particular, or that it was inappropriate to rely on "estimated" production for certain parts of the domestic industry.[3] The time periods corresponding to these data—calendar year 2020 in the case of the majority of this information, or 2018-2019 in the case of the production-to-shipments conversion ratio—constitute public information.[4] Similarly, the fact that the USDOC used

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[1] U.S. First Written Submission, para. 20 (citing *EC – Hormones (AB)*, para. 109 (*citing US – Wool Shirts and Blouses (AB)*, pp. 14-16); *China – Broiler Products*, para. 7.6).

[2] *See generally* Argentina's First Written Submission.

[3] U.S. Opening Statement at the First Substantive Meeting of the Panel, para. 5 (citing Argentina's First Written Submission, paras. 168-178, 189-196, 197-208, 215, 219, 224, 227, 230, 232, 235-236).

[4] U.S. Department of Commerce, Enforcement and Compliance, Office of AD/CVD Operations, "Antidumping Duty Investigation Initiation Checklist: Oil Country Tubular Goods from Argentina," Attachment II, at 4-7, 15-17 (Exhibit ARG-18) ("USDOC Initiation Checklist") (for example, the USDOC explained that "[t]o approximate non-petitioning companies' production from the available shipment data, the petitioners first calculated the historical ratio (2018-2019) of non-petitioning companies' production to shipments derived from data reported in the ITC's *India et al*

"estimated" domestic production for certain parts of the domestic industry is a public fact.[5] Likewise, Argentina's argument that the USDOC somehow shifted a burden to Tenaris, or somehow impermissibly declined to "poll" the domestic industry, is based on public information.[6]

5. Tellingly, in its opening statement during the first substantive meeting of the Panel, Argentina decided to now assert that: "the *data and information provided in support of the industry support calculations were neither accurate nor adequate*, and they failed to provide a sufficient basis for the USDOC to determine whether the petition satisfied the threshold required to be 'made by or on behalf of the domestic industry'."[7] Argentina then suggests that, because the USDOC's *calculation* of industry support was redacted in its initiation checklist, "the Panel is unable to assess the U.S. rebuttal claims regarding the *accuracy and adequacy of the data relied upon for the industry support calculations*, and whether the data were sufficient to demonstrate that the application was made 'by or on behalf of the domestic industry'."[8] But most of Argentina's challenges to the USDOC's industry support determination do not revolve around the *calculations* themselves, but the *data* that the USDOC relied on in performing the calculation. The time periods surrounding, estimated nature of, and surrounding global factual circumstances regarding these data are public information.

6. Argentina only makes one "calculation"-related challenge to the USDOC's industry support determination in its first written submission, which is that the USDOC allegedly "double-counted" certain domestic production. But, similar to its other arguments regarding industry support for the application, the information that Argentina relies on in asserting that there was a "significant risk" that the USDOC "double-counted" production by including processors and finishers of unfinished OCTG in its industry support assessment, or that it was "unclear" whether the USDOC "double-counted" production, is based on *public* information that Tenaris provided to the USDOC during initiation.[9] While Argentina has attempted to introduce a brand new "under-counting" argument in its opening statement before the first substantive meeting of the Panel, Argentina has relied on a combination of public information from the USDOC's record—some of which is the same information underpinning its "double-counting" allegation—and business confidential information ("BCI") information that Argentina itself introduced.[10]

OCTG 2020 Review and applied the resulting ratio to the estimated non-petitioning companies' shipments in 2020"); *see also* U.S. Opening Statement at the First Substantive Meeting of the Panel, para. 8.

[5] *See* USDOC Initiation Checklist, Attachment II, at 16 (Exhibit ARG-18) (for example, the USDOC stated that "neither the statute nor regulations prevent the petitioners from *estimating* the production of the non-petitioning companies") (emphasis added).

[6] *See* U.S. First Written Submission, paras. 56-58, 67-73; Argentina's First Written Submission, paras. 182-183, 209-212, 218, 220.

[7] Argentina's Opening Statement at the First Substantive Meeting of the Panel, para. 13 (emphasis added).

[8] Argentina's Opening Statement at the First Substantive Meeting of the Panel, para. 14 (emphasis added).

[9] *See* Argentina's First Written Submission, paras. 197-208 (citing Tenaris's Oct. 15, 2021 Comments at Exhibits 5, 6 (Exhibit ARG-03)); U.S First Written Submission, paras. 59-64.

[10] Argentina's Opening Statement at the First Substantive Meeting of the Panel, paras. 27-28 (citing, *e.g.*, Exhibit ARG-66 (BCI)).

7. With regard to the USITC's decision to cumulate imports, and its analyses of material injury and causal link, again, Argentina and the United States have both relied on public information to make arguments in this dispute. Although certain tables from the USITC Final Report are redacted as confidential, the public version of the USITC Final Report provides sufficient detail for the Panel to understand what the ITC concluded on the basis of those tables.[11]

8. While the United States considers that the USDOC and the USITC are among the most transparent trade remedy investigating authorities in the world, we do not consider that redacted BCI on the authorities' records constitutes necessary information that the Panel must examine in this dispute in order to address Argentina's claims, in light of the arguments Argentina is making and the evidence it is relying on.

II. INITIATION

Question 2 (To Argentina): In the first meeting of the Panel, the United States suggested that Argentina was making "five thematic arguments" under Articles 5.1 and 5.4, presumably based on the presentation in sub-section C of section V of Argentina's first written submission.[12] Argentina appeared to disagree with this characterization at the meeting.

Is subsection C Argentina's description of the relevant facts, and the arguments presented in subsections D, E, F and G Argentina's explanation of why, based on those facts, the USDOC violated a particular provision of the Anti-Dumping Agreement?

Response:

9. This question is addressed to Argentina.

Question 3 (To Argentina): Does Argentina challenge under Article 5.3, Article 5.2(i) or Article 6.6 of the Anti-Dumping Agreement any additional conduct to what it is challenging under Articles 5.1 and 5.4 of the Anti-Dumping Agreement? In other words, is the factual basis of Argentina's claims under all these provisions the same? Please answer by pointing to the relevant parts of the first written submission.

Response:

10. This question is addressed to Argentina.

[11] *See generally Oil Country Tubular Goods from Argentina, Mexico, Russia and South Korea*, Inv. Nos. 701-TA-671-672 and 731-TA-1571-1573 (Final), USITC Pub. No. 5381 (Exhibit ARG-01) ("USITC Final Report").

[12] Argentina's first written submission, pp. 52, 55, 58, 59 and 62. See also ibid. para. 167.

Question 4 (To Argentina): Article 5.4 refers to two percentages, as follows:

$$\frac{\textbf{(a) output of producers supporting the application (numerator)}}{\textbf{(b) output of producers supporting or opposing the application (denominator)}} \textbf{ \%}$$

$$\frac{\textbf{(c) output of producers supporting the application (numerator)}}{\textbf{(d) total domestic production (denominator)}} \textbf{ \%}$$

For each of your arguments under Articles 5.1, 5.2, 5.3, 5.4, and 6.6, please specify whether it refers to the numerator (a), the denominator (b), the numerator (c), or the denominator (d).

Response:

11. This question is addressed to Argentina.

Question 5 (To both parties): The Panel understands that the like product included finished OCTG. Please specify whether the shipment data used to determine the total domestic production included:

a. ***Any*** **green pipe produced in the United States** ***in addition*** **to the finished OCTG that was produced by processing** ***the same*** **green pipe. If not, please specify how the USDOC assured itself that this was the case.**

b. **All OCTG obtained by processing in the United States green pipe that was imported (regardless of the country it was imported from). If so, please specify how the USDOC assured itself that this was the case.**

Response:

12. In making its initiation determination, the USDOC examined the evidence on the record, including the starting point for the denominator of the industry support calculation. The basis for the denominator was 2020 domestic shipment data from an industry source, which the applicants and the USDOC described as "the recognized authority on the U.S. pipe and tube market."[13]

13. As part of its evaluation of the adequacy and accuracy of the application, the USDOC requested supplemental information regarding this source and whether the source accounted for all U.S. producers' domestic shipments. In their response, the applicants attested that this data source accounted for all U.S. shipments of the domestic like product and that these data were the best available information regarding the volume of domestic OCTG shipments in 2020.[14]

[13] USDOC Initiation Checklist, Attachment II, at 5 (Exhibit ARG-18).

[14] Applicants' Response to USDOC General Issues Questionnaire at 4-5 (Oct. 12, 2021) (Exhibit ARG-14).

14. No interested party submitted any evidence or argument to detract from this well-established industry source as the reasonable starting point for addressing the denominator in the USDOC's industry support calculation. Furthermore, no interested party claimed that this data did not reasonably reflect all U.S. producers' domestic shipments of the domestic like product (including green tube finishing operations) in calendar year 2020. In addition, no interested party claimed that the industry source data for calendar year 2020 were inaccurate, or that there was a more appropriate, reasonably available source for industry-wide shipment or production data for calendar year 2020.

15. Thus, put simply, the USDOC did follow up with the applicants regarding the accuracy and adequacy of this data to discern whether it was sufficient for determining industry support, and received no information to the contrary. In light of this follow-up, the USDOC concluded that the shipment data from this industry source accounted for all domestic shipments of the domestic like product (including the green tube finishing operations), and that the resulting denominator used in the industry support calculation appropriately reflected the entire universe of production of the domestic like product in calendar year 2020.

Question 6 (To the United States): At the time of initiation, what information was before the USDOC about the product scope of the data on US shipments in the publication used to assess industry support?

Response:

16. Regarding the product scope of the data on U.S. shipments in the "recognized authority" publication, at the time of initiation this data constituted the best available information on the record regarding the volume of domestic OCTG shipments in 2020. In fact, this publication was the *only* source data for U.S. OCTG shipments on the record before the USDOC during the pre-initiation period.

17. Moreover, the record before the USDOC supported the conclusion that these shipment data accounted for all U.S. shipments of the domestic like product,[15] which the applicants and the USDOC defined for initiation as commensurate with the scope of the investigation itself (*i.e.*, OCTG whether "finished" or "unfinished").[16] Importantly, and in light of the USDOC's questions following up with the applicants on this data,[17] no interested party provided any evidence to impugn the shipment data contained in this publication at the time of initiation.[18]

18. No interested party submitted arguments or evidence to undermine the USDOC's conclusion. If interested parties had concerns about the product scope representativeness of the data from the "recognized authority" publication, then it was incumbent upon these parties to raise such concerns before the USDOC during initiation, and to provide evidence to support such claims

[15] Applicants' Response to General Issues Questionnaire at 4-5 (Oct. 12, 2021) (Exhibit ARG-14).

[16] *See* USDOC Initiation Checklist, Attachment I & Attachment II, at 3 (Exhibit ARG-18).

[17] Applicants' Response to USDOC General Issues Questionnaire at 4-5 (Oct. 12, 2021) (Exhibit ARG-14).

[18] *See* USDOC Initiation Checklist, Attachment II, at 15-16 (Exhibit ARG-18).

on the record before the USDOC prior to its initiation decision. Notably, none of the information included in Argentina's new Exhibit ARG-66 (BCI) was on the administrative record before the USDOC at the time of initiation. Indeed, even a cursory review of this exhibit reveals that [[* * *]].[19]

Question 7 (To both parties): If the estimates of US production arrived at by the petitioners were deficient in some respect, would such limitations be covered by the language in Article 5.2?

Response:

19. As an initial matter, here, the estimates of U.S. production proffered by the applicants were not "deficient." The USDOC determined that "[w]ith respect to the sufficiency of the [applicants'] industry support calculations, the [applicants] have provided, with supporting documentation, reasonable estimates of total 2020 production of OCTG in the United States, which are ultimately derived from domestic shipment data for the industry."[20] On the basis of this information, the USDOC determined, after performing multiple lines of analyses, that the applicants "have provided reasonably available information to account for total production of the domestic like product in their industry support calculation and that the [application] [has] met the requirements" under Article 5.4 of the AD Agreement.[21]

20. Assuming for the sake of argument that the estimates of U.S. production provided by the applicants were deficient in some respect, Article 5.2 recognizes that information contained in an application may be limited. Article 5.2 addresses the content of an application. It provides, in relevant part, that "[t]he application shall contain such information as is *reasonably available to the applicant*."[22] Relative to this requirement, Article 5.2 articulates that, "[w]here a written application is made on behalf of the domestic industry," the application shall identify "a list of all known domestic producers of the like product (or associations of domestic producers of the like product) and, *to the extent possible*, a description of the volume and value of domestic production of the like product accounted for by such producers."[23] These emphasized qualifiers temper what an application must contain relevant to industry support.

Question 8 (To both parties): To what extent is the authorities' compliance with the legal standard in Articles 5.3 and 5.4 informed by representations from interested parties on relevant particularities of the industry concerned?

Response:

[19] *See* Exhibit ARG-66 (BCI).

[20] USDOC Initiation Checklist, Attachment II, at 14 (Exhibit ARG-18).

[21] USDOC Initiation Checklist, Attachment II, at 18 (Exhibit ARG-18).

[22] AD Agreement, Article 5.2 (emphasis added).

[23] AD Agreement, Article 5.2(i) (emphasis added).

21. Both Articles 5.3 and 5.4 of the AD Agreement recognize that an investigating authority's compliance with the relevant legal standards is informed by representations and supporting evidence provided or expressed by interested parties prior to initiation. For example, Article 5.3 provides that "the authorities shall examine the accuracy and adequacy of the evidence *provided in the application* to determine whether there is sufficient evidence to justify the initiation of an investigation."[24] That is, the starting point for assessing whether there is "sufficient" evidence to justify initiating an investigation is informed by evidence "provided in the application," which of course is "provided" by an interested party—the applicant(s).[25]

22. Likewise, the first sentence of Article 5.4 states: "An investigation shall not be initiated pursuant to paragraph 1 unless the authorities have determined, on the basis of an examination of the degree of support for, or opposition to, the application *expressed by domestic producers of the like product*, that the application has been made by or on behalf of the domestic industry."[26] Like Article 5.3, compliance with Article 5.4 does entail considerations of viewpoints and evidence by interested parties, particularly those of domestic producers of the like product.[27]

23. Of course, an investigating authority is not precluded from considering additional information beyond the four corners of the application in satisfying Articles 5.3 and 5.4.[28] In situations where there are apparent particularities in the application warranting follow-up with the applicant, the investigating authority should engage in such follow-up, as the USDOC did here with regard to certain questions about the application.

24. Inherently, an initiation of an AD investigation, like the investigation itself, often involves an ebb and flow of information from various interested parties with varying interests and points of view. Such interested parties include – in addition to domestic producers of the like product – exporters, foreign producers, or importers of the product at issue, as well as the government of the exporting Member.[29] Here, various interested parties provided representations and/or evidence to the USDOC regarding initiation, including on the question of industry support for the application. These types of information, particularly if such information reveals a problem with the application, do inform the investigating authority's compliance with Articles 5.3 and 5.4 as well. But, with regard to the Panel's reference to "representations" from interested parties, to the extent such "representations" amount to speculation without any supporting evidence, the investigating authority should assign them appropriate weight when balancing them against evidence on the

[24] AD Agreement, Article 5.3 (emphasis added).

[25] *See* AD Agreement, Article 6.11(iii) ("interested parties" include "a producer of the like product in the importing Member").

[26] AD Agreement, Article 5.4 (emphasis added).

[27] *See* AD Agreement, Article 6.11(iii).

[28] *See, e.g., US – Softwood Lumber V (Panel)*, para. 7.75 ("Although the information contained in the application therefore forms the basis for the determination of sufficiency of the evidence for purposes of the initiation of the investigation, an investigating authority is not precluded from gathering information itself to ensure that it is satisfied that it has sufficient evidence before it, *although it is not obliged to do so*") (emphasis added).

[29] AD Agreement, Article 6.11(i)-(ii).

record that contradicts such "representations." After all, an investigating authority must determine whether to initiate based on positive evidence on the record, not mere speculation.[30]

Question 9 (To both parties): If any such representations were needed and were made in this case, please point to the relevant references on the record.

Response:

25. As Argentina acknowledges, "the timing of a complaining party's notice to the authority of a problem with information supporting an application is also a relevant consideration in terms of assessing compliance with Article 5.4."[31] The same principle applies to Article 5.3. The United States refers the Panel to its response to question 10(b) below, where we elaborate on this principle.

26. If Tenaris—or the Government of Argentina, as an interested party—saw or foresaw any issue with relying on the "recognized authority" domestic shipment data publication, it should have pointed out such an issue at initiation. However, no interested party made any argument that reliance on the domestic industry shipment data would have entailed "double-counting"[32]—or "understate"[33]—domestic production. To the contrary, the USDOC expressly observed that "Tenaris USA has not provided any evidence or made any arguments to impugn the . . . shipment data, which form the basis of the denominator used in the [applicants'] calculation of industry support."[34] Indeed, it is telling that Exhibit ARG-66 (BCI), which Argentina introduced at the first substantive meeting of the Panel on its new allegation that the USDOC "understated" domestic production by using domestic industry shipment data, [[* * *]].[35] In any event, the United States disagrees that there was any "double-counting" or "understating" of domestic production in the USDOC's underlying initiation.

Question 10: Argentina states that "domestic shipment data from these publications would be understated because they do not include the U.S. processing (heat treating, plus any finishing) of imported green pipe".[36]

a. (To Argentina): Please point to the relevant submissions made by the interested parties before the USDOC on this point.

Response:

[30] U.S. First Written Submission, para. 70.

[31] *See* Argentina's First Written Submission, para. 159 (citing *EC – Fasteners (China) (Panel)*, para. 7.182).

[32] U.S. First Written Submission, para. 61.

[33] Argentina's Opening Statement at the First Substantive Meeting of the Panel, para. 28.

[34] USDOC Initiation Checklist, Attachment II, at 15 (Exhibit ARG-18).

[35] Argentina's Opening Statement at the First Substantive Meeting of the Panel, paras. 27-28 (citing Exhibit ARG-66 (BCI)).

[36] Argentina's opening statement at first meeting of the Panel, para. 28.

27. This question is addressed to Argentina.

b. (To both parties): If interested parties did not make relevant submissions on this point before the USDOC, was the USDOC still required under Articles 5.1 and 5.4, or Article 5.3, to examine these alleged issues with the data? Please limit your answers here to what the USDOC was obligated to do, and not what the USDOC did.

Response:

28. If such an issue were *clearly apparent* to the investigating authority from the record before it, then Article 5.3 would have obligated the authority to make appropriate inquiries regarding that issue, even if no interested party pointed out the issue. Such inquiries would be in conformity with the investigating authority's obligation to "examine the accuracy and adequacy of the evidence provided in the application to determine whether there is sufficient evidence to justify the initiation of an investigation,"[37] and to ensure that the authority can "determine[ ] . . . that the application has been made by or on behalf of the domestic industry."[38] However, such issues were not clearly apparent on the record before the USDOC at the time of initiation.

29. Argentina has argued that "the *timing* of a complaining party's notice to the authority of a problem with information supporting an application is also a relevant consideration in terms of assessing compliance with Article 5.4."[39] In this regard, the United States agrees with Argentina. Specifically, if a party never put the authority on notice of a specific issue, then it strains logic to expect that the authority should have addressed an issue it would not have been aware of. Here, just as no interested party made any "double-counting" arguments to the USDOC at initiation, no interested party made any arguments at initiation that the applicants' calculations "understated" domestic production either. This is despite the fact that interested parties had several opportunities to comment on these calculations, and in fact did comment on other aspects of industry support in great depth.

30. The Panel's task in this dispute is to assess whether an unbiased and objective investigating authority, looking at the *same record* as the relevant investigating authority, could have—not would have—reached the same conclusions that the authority reached.[40] The DSU calls on the Panel to assess the "applicability of and conformity with the covered agreements," not to conduct a new investigation or in hindsight substitute its judgment for that of the investigating authority.[41] Thus, in assessing this issue in light of this standard of review, the Panel should consider whether this purported concern now being raised by Argentina was clearly apparent to the USDOC from

[37] AD Agreement, Article 5.3.

[38] AD Agreement, Article 5.4; *see also* AD Agreement, Article 5.1.

[39] Argentina's First Written Submission, para. 159 (citing *EC – Fasteners (China) (Panel)*, para. 7.182) (emphasis added).

[40] *See* AD Agreement, Article 17.6(i).

[41] *See* DSU, Article 11; *see also* U.S. Closing Statement at the First Substantive Meeting of the Panel, para. 4 (emphasis added).

the record before it or whether an unbiased and objective investigating authority could have reached the same conclusion as USDOC.

c. (To Argentina): In reference to your statement, please clarify what you mean by "plus any finishing".

Response:

31. This question is addressed to Argentina.

d. (To both parties): Please clarify whether the processors that are part of the domestic industry were only those that engaged in heat-treating unfinished OCTG, as suggested in pages 10-11 of Exhibit ARG-1. If so, what does Argentina mean when it states domestic shipment data was understated because they do not include the US processing, which it describes as heat treating "plus any finishing"?[42]

Response:

32. As an initial matter, Exhibit ARG-01 corresponds to the USITC Final Report in the OCTG investigation at issue in this dispute. The USITC published this report over one year after the USDOC initiated the underlying investigation. As this report was not available to the USDOC at initiation, the USDOC could not possibly have considered it at that time.

33. No interested party—including Tenaris—made any specific arguments about heat-treating unfinished OCTG before the USDOC at initiation. In its submissions to the USDOC, Tenaris argued that "two of the petitioner companies – Borusmann Mannesmann Pipe U.S., Inc. ('Borusan U.S.') and PTC Liberty Tubulars LLC ('PTC') – appear to have potentially significant finishing operations relative to their actual OCTG production," and that "mere finishing operations" of OCTG should not be included in the calculation of industry support.[43]

34. Regardless, the record before the USDOC prior to initiation indicated that in past proceedings on OCTG, processors of green tube that provided heat treatment were included as part of the domestic industry producing OCTG.[44] At initiation, the USDOC properly considered the record and found that there was no reason to believe that these finishing operations should *not* be included as production of the like product.[45] The pre-initiation record supports the USDOC's finding that OCTG, including unfinished green tube, as defined in the scope, constituted a single like product and that the domestic industry consisted of all U.S. producers of

[42] Argentina's opening statement at first meeting of the Panel, para. 28.

[43] Tenaris' Pre-Initiation Comments at 9-11 (Oct. 15, 2021) (Exhibit ARG-03); *see also* Tenaris' Pre-Initiation Comments at 8 (Oct. 20, 2021) (Exhibit ARG-17); USDOC Initiation Checklist, Attachment II, at 10, 14 (Exhibit ARG-18).

[44] Application, Volume I, at Exhibits I-11, I-14 (Oct. 6, 2021) (Exhibit USA-35). While Argentina included excerpts of the application as Exhibit ARG-02 in its first written submission, Exhibit ARG-02 does not include these particular exhibits.

[45] USDOC Initiation Checklist, Attachment II, at 14 (Exhibit ARG-18).

OCTG, including finishers and processors of green tube that provide heat treatment.[46] Furthermore, the information on the record at initiation supported the USDOC's conclusion that the industry support calculations properly accounted for the production of the domestic like product.[47]

Question 11: In paragraph 42 of its first written submission, the United States submits that the USDOC also incorporated several additional approaches to assess industry support in its analysis, "including" an alternative approach proposed by Tenaris.

a. (To the United States): Please identify and explain each of these approaches alluded to by the United States. Please point to the relevant parts of the USDOC's explanation in Exhibit ARG-18.

b. (To both parties): Please explain how these additional approaches are relevant to the Panel's evaluation of Argentina's claims.

c. (To the United States): In paragraph 42 of its first written submission, the United States submits that in response to the parties' arguments regarding the use of a historical ratio to approximate 2020 production, the USDOC used the "applicants' 2020 ratio of production-to-domestic shipments".

Please describe the methodology used to calculate the industry support under which the USDOC used this ratio.

Response:

35. The United States addresses all sub-parts of this question together.

36. As an initial matter, the USDOC relied on certain approaches to discern whether the application was made by or on behalf of the domestic industry, consistent with Article 5.4. Each of these approaches is discussed in the USDOC Initiation Checklist,[48] which the United States explained in our first written submission.[49] We explain these approaches in further detail in response to question 14 below. However, as the Panel's question here specifically regards the two approaches referenced in paragraph 42 of the United States' first written submission, we address those approaches here as well.

37. As the Panel's sub-part (a) to its question observes, in addition to the approaches discussed at paragraphs 39-41 of our first written submission, the USDOC also applied additional

[46] USDOC Initiation Checklist, Attachment II, at 14 (Exhibit ARG-18); *see also* Application, Volume I, at Exhibits I-11, I-14 (Oct. 6, 2021) (Exhibit USA-35).

[47] USDOC Initiation Checklist, Attachment II, at 14 (Exhibit ARG-18).

[48] USDOC Initiation Checklist, Attachment II, at 4-7, 17-18 & nn. 136, 139-140 (Exhibit ARG-18).

[49] U.S. First Written Submission, paras. 37-44.

approaches, in order to refute certain arguments by interested parties relating to purported concerns about certain of the industry support data.[50]

38. One of the additional approaches was Tenaris's approach, which is referenced in the USDOC Initiation Checklist; however, the underlying steps and calculations are BCI.[51] In referencing Tenaris's approach, the USDOC Initiation Checklist cites to a letter from Tenaris,[52] which corresponds to Tenaris's October 15, 2021 comments on industry support that Argentina appended to its first written submission.[53] Similar to the USDOC Initiation Checklist, the discussion of Tenaris's approach is bracketed as BCI in those October 15, 2021 comments.[54]

39. However, notably, the USDOC observed that Tenaris's alternative calculation suffered from certain issues, including the fact that it "did not account for Wheatland's production" (which was a supporter of the application), but "once corrected to properly account for the production noted above, lead to same end results as the [applicants'] calculation."[55]

40. Another approach revolved around refuting interested party arguments that the USITC sunset review data from 2018-2019, used as a production-to-shipments conversion ratio, were not representative of the OCTG market in 2020. This approach is the same approach referenced in the Panel's sub-question (c). The USDOC Initiation Checklist depicts how this approach operated.[56] To further clarify, the USDOC undertook the following steps:

1. The USDOC used the company applicants' and supporters' (including Wheatland Tube) actual 2020 production data as the numerator in the industry support calculation.

2. For the denominator, the USDOC did not have 2020 domestic production data for the entire domestic industry, just those of the company applicants and supporters. Therefore, to discern production data for the entire industry, the USDOC started with the 2020 industry-wide domestic shipment data. The USDOC needed to convert the 2020 domestic shipment data for the entire domestic industry to production data. Thus, the USDOC used the applicants' own shipments-to-domestic production ratio to convert the industry-wide domestic shipment data to domestic production data. In other words, the 2020 conversion data were based on the applicants' own information and production and shipments experience in 2020, and not on the 2018-2019 USITC sunset review data.

[50] U.S. First Written Submission, para. 42.

[51] USDOC Initiation Checklist, Attachment II, at 17 (Exhibit ARG-18).

[52] USDOC Initiation Checklist, Attachment II, at 17 n.137 (Exhibit ARG-18) (citing "Tenaris Letter II at 6-7 and Exhibit 1").

[53] Tenaris's Oct. 15, 2021 Comments on Industry Support (Exhibit ARG-03).

[54] Tenaris's Oct. 15, 2021 Comments on Industry Support at 6-7 & Exhibit 1 (Exhibit ARG-03).

[55] Commerce Initiation Checklist, Attachment II, at 17 (Exhibit ARG-18).

[56] *See* USDOC Initiation Checklist, Attachment II, at 4-7, 17, n.140 (Exhibit ARG-18).

3. The USDOC then took this resulting estimated production data for the entire industry, and used this for purposes of deriving the denominator for the calculations.

4. The USDOC proceeded to determine whether the application satisfied the thresholds in Article 5.4 of the AD Agreement. With regard to this latter step, the USDOC determined that this approach led to the same results as the other approaches.[57]

41. The United States referenced these two additional approaches—the Tenaris approach, and the USDOC's approach of relying only on 2020 data to determine the denominator of its calculation—as illustrative of the fact that the USDOC rigorously assessed the record evidence in approaching the question of industry support, and that it grappled with arguments raised by interested parties. While Article 5.4 does not require an investigating authority to employ multiple approaches to assessing industry support, the culmination of the discussion above means that the USDOC considered *four* different approaches to assessing whether the application satisfied Article 5.4's numerical thresholds. In addition, the fact that the USDOC considered multiple ways of assessing the evidence—which led to the same conclusions that the application was made by or on behalf of the domestic industry—demonstrates that the USDOC assessed the "accuracy" and "adequacy" of the evidence underpinning industry support for the application in determining that the evidence was "sufficient" under Article 5.3.

Question 12 (To Argentina): Please clarify whether Argentina's arguments challenging the applicants' and USDOC's reliance on shipment data from the year 2020 are based on the unique demand factors that affected the OCTG market in 2020, or are also based on any temporal gap between 2020 and the date of initiation of the underlying investigation. Please point to the specific portions of your first written submission clarifying this.

Response:

42. This question is addressed to Argentina.

Question 13 (To Argentina): Argentina submits that Article 5.2(i) requires that the applicants, to the extent possible, submit information as to the actual volume of domestic production of the like product accounted for by those in support of the application.[58] Please clarify how the USDOC's record, in particular the initiation checklist in Exhibit ARG-18, supports Argentina's submission that the applicants did not provide their production data or that of supporter industries.

Response:

43. This question is addressed to Argentina.

Question 14 (To both parties): Please explain all the methodologies used by USDOC in this case to ascertain that (a) domestic producers expressly supporting the application accounted

[57] USDOC Initiation Checklist, Attachment II, at 17-18 & n.142 (Exhibit ARG-18).

[58] Argentina's first written submission, para. 235.

for no less than 25% of total production of the like product produced by the domestic industry; and (b) the application was supported by those domestic producers whose collective output constituted more than 50% of the total production of the like product produced by that portion of the domestic industry expressing either support for or opposition to the application. Please explain how the shipment data from 2020, and the 2018-2019 ratio to convert domestic shipment to production were used in each of these methodologies.

Response:

44. As Article 5.4 of the AD requires, in determining whether the application was made by or on behalf of the domestic industry, the USDOC assessed: (1) whether the supporters of the application accounted for at least 25 percent of total domestic production of OCTG, and (2) whether the supporters accounted for more than 50 percent of domestic production represented by those expressing a view on the application (*i.e.*, those supporting or opposing the application) ("50 percent support/opinion threshold"). We address the USDOC's assessment of both of these numerical thresholds below.

A. 25 Percent Threshold

45. To determine whether the supporters of the application accounted for at least 25 percent of total production of OCTG, the USDOC employed four different lines of analysis. Under all four lines of analysis, the supporters of the application accounted for more than 25 percent of total domestic production of OCTG.[59] The latter two approaches are also discussed in response to question 11 above. The United States describes each line of analysis below.

Approach 1: The Applicants' Proposed Approach

46. In the application, and through the successive rounds of back-and-forth between the USDOC and the applicants regarding the application, the applicants proposed an approach of assessing industry support. The numerator was comprised of calendar year 2020 domestic production data of supporters of the application. The denominator comprised an estimate of calendar year 2020 production for the entire domestic industry, based on converting calendar year 2020 domestic industry shipment data to total production data for that year, using a production-to-shipments conversion ratio derived from the USITC sunset review report for other AD and CVD orders on OCTG covering 2018-2019.

47. Establishing the denominator in particular involved two key steps, with several sub-steps. These steps are articulated in the USDOC Initiation Checklist,[60] but we detail them below. The applicants also provided on the USDOC's record a publicly available, line-by-line explanation (including mathematical formulas) of their proposed approach.[61]

[59] USDOC Initiation Checklist, Attachment II, at 6, 17 (Exhibit ARG-18).

[60] *See* USDOC Initiation Checklist, Attachment II, at 5-6 (Exhibit ARG-18).

[61] Applicants' Second General Issues Questionnaire Response at Exhibit 5 (Oct. 21, 2021) (Exhibit ARG-20).

48. First, the applicants calculated a ratio of non-applicant companies' production-to-shipments. To do this, they undertook the following sub-steps:

1. The applicants consulted the 2018-2019 *industry-wide production data* from the aforementioned USITC sunset review report and subtracted their own production during the same time period from this figure. This calculation yielded non-applicant companies' production during that same time period.

2. The applicants consulted the 2018-2019 *industry-wide U.S. shipment data* from the same USITC report, and calculated a ratio of their own U.S. shipments to total shipments during the 2018-2019 time period. They then applied this ratio to the 2018-2019 industry-wide U.S. shipment data in order to scale the industry wide U.S. shipment data from the USITC report to approximate industry-wide total shipments in the same period.

3. The applicants then subtracted their own total 2018-2019 shipments from the 2018-2019 industry-wide total shipments to calculate non-applicant companies' total shipments for the 2018-2019 period.

4. The applicants then calculated the ratio of non-applicant companies' production to non-applicant companies' total shipments during the 2018-2019 time period.

49. Second, the applicants converted the available 2020 industry-wide domestic shipment data to estimated production data for that year. To do this, the applicants undertook the following sub-steps:

1. The applicants consulted the calendar year 2020 industry-wide U.S. shipment data from the "recognized authority" industry source. This source included industry-wide *domestic* shipments, but not *total* shipments. Thus, the applicants needed to extrapolate the 2020 industry-wide total shipments to estimate 2020 production.

2. The applicants calculated the ratio of their own export shipments-to-total shipments in calendar year 2020.

3. The applicants applied the ratio of their own export shipments-to-total shipments to the calendar year 2020 industry-wide domestic shipment data from the "recognized authority" source to estimate total shipments, inclusive of export shipments, for the entire domestic industry for calendar year 2020.

4. The applicants subtracted their own 2020 total shipments from the 2020 industry-wide estimated shipments to derive non-applicant companies' 2020 total shipments.

5. The applicants applied the 2018-2019 ratio of non-applicant companies' production-to-total shipments to the figure for non-applicant companies' 2020 total shipments, to estimate total production for non-applicants for calendar year 2020.

6. The applicants then added their own 2020 production to the estimated total production for non-applicants to calculate total estimated 2020 industry-wide production, which served as the denominator.

50. Applying the numerator to the denominator under this approach revealed that "the supporters of the [application] account[ed] for . . . well above the 25 percent threshold" found in Article 5.4 of the AD Agreement.[62]

Approach 2: The USDOC's "Conservative" Approach

51. The USDOC also applied its own approach, based on record information, to determine whether the application had the support of companies representing at least 25 percent of total domestic production.[63] Like the applicants' proposed approach described above, the numerator here comprised supporters' own domestic production data for calendar year 2020. Furthermore, like the applicants' proposed approach, the USDOC needed to estimate industry-wide production data for 2020. To do so, the USDOC applied a more "conservative" approach to estimating the industry-wide production data, as detailed in the USDOC Initiation Checklist[64] and as described below. This approach revolved around refuting interested party arguments that the applicants' underlying calculations for estimating non-applicants' production and shipment ratios based on the USITC 2018-2019 sunset review data were skewed.

52. First, the USDOC consulted the same 2018-2019 U.S. shipment and production data from the aforementioned USITC sunset review, and calculated a ratio of the entire U.S. industry's production-to-shipments for 2018-2019. Second, the USDOC applied this 2018-2019 production-to-shipments ratio to the calendar year 2020 industry-wide U.S. shipment data from the same "recognized authority" industry source that the applicants relied on. What resulted from this calculation was a figure comprising total estimated production for the entire domestic industry for calendar year 2020. In other words, the conversion data were based on the 2018-2019 USITC sunset review data for the entire domestic industry, and not the applicants' own 2018-2019 ratios or the 2018-2019 ratios the applicants calculated for the non-applicants. The USDOC then took this resulting estimated domestic production data for the entire industry and used it as the denominator for this second approach.

53. Like the applicants' proposed approach described above, applying this second approach revealed the same overall result: "the supporters of the [application] account for . . . well above the 25 percent threshold."[65]

Approach 3: Tenaris's Proposed Approach

[62] USDOC Initiation Checklist, Attachment II, at 6 (Exhibit ARG-18).

[63] USDOC Initiation Checklist, Attachment II, at 5-6 (Exhibit ARG-18).

[64] USDOC Initiation Checklist, Attachment II, at 5-6 (Exhibit ARG-18).

[65] USDOC Initiation Checklist, Attachment II, at 6 (Exhibit ARG-18).

54. We discussed this approach to the extent possible based on public information in response to question 11, and we refer to our response above in that regard. To briefly reiterate, Tenaris in its pre-initiation comments proposed an approach to assessing industry support for the application, which is redacted on the USDOC's record as BCI.[66] However, Tenaris's proposed approach failed to account for certain domestic production.[67] But once corrected to properly account for such production, Tenaris's approach led "to the same end results as the [applicants'] calculation [(*i.e.*, the first approach described above)]—*i.e.*, the supporters of the [application] account for more than 25 percent of total U.S. production."[68]

Approach 4: The USDOC's Approach of Using 2020 Production-to-Shipments Ratio Instead of 2018-2019 Ratio From the USITC Sunset Review

55. We discussed this approach in response to question 11, and we refer to our response above in that regard. To briefly reiterate, this approach revolved around refuting interested party arguments that the USITC sunset review data from 2018-2019, used as a production-to-shipments conversion ratio, were not representative of the OCTG market in 2020. This approach is the same approach referenced in the Panel's sub-question 11(c). The key difference in this approach from the first and second approaches is that, while the USDOC relied on the 2020 industry-wide domestic shipments data from the "recognized authority" industry source, it did *not* rely on the 2018-2019 production-to-shipments ratio derived from the USITC sunset review report. The USDOC instead relied on a conversion ratio derived from the applicants' own production-to-domestic shipments from calendar year 2020, in order to convert the 2020 industry-wide domestic shipments data to estimated production data for that year.[69] This resulting figure served as the denominator for the industry support calculation, while the supporters' own production from calendar year 2020 served as the numerator.

56. Like the other three approaches, the application of this approach revealed the same overall result as these other approaches: "the supporters of the [application] account for more than 25 percent of total U.S. production."[70]

B. 50 Percent Support/Opinion Threshold

57. Although the USDOC determined from the record that the applicants satisfied the 25 percent threshold in Article 5.4 based on each of the four approaches described above, the USDOC still needed to determine whether the applicants satisfied the 50 percent support/opinion threshold.

58. To do so, the USDOC relied on the supporters' total calendar year 2020 production data as the numerator. For the denominator, the USDOC relied on total estimated production data of those

[66] USDOC Initiation Checklist, Attachment II, at 17 & n.139 (Exhibit ARG-18); Tenaris's Oct. 15, 2021 Comments on Industry Support at 6-7 & Exhibit 1 (Exhibit ARG-03).

[67] USDOC Initiation Checklist, Attachment II, at 17 (Exhibit ARG-18).

[68] USDOC Initiation Checklist, Attachment II, at 17 (Exhibit ARG-18).

[69] USDOC Initiation Checklist, Attachment II, at 17 & n.140 (Exhibit ARG-18).

[70] USDOC Initiation Checklist, Attachment II, at 17 (Exhibit ARG-18).

companies either expressing support for, or opposition to, the application. It derived these figures by parsing out from each of the four approaches to assessing the 25 percent threshold described above the estimated production information from those companies either supporting or opposing the application. Tenaris was the only domestic producer that opposed the application; however, it did not provide its 2020 production in any of its four pre-initiation submissions commenting on industry support for the USDOC to account for its opposition.[71] Ultimately, the USDOC determined that the application satisfied the 50 percent support/opinion threshold by comparing the numerator to the relevant denominator under each approach.[72] Moreover, despite the fact that Tenaris did not provide its production data for the USDOC to account for its opposition, the USDOC mathematically found under each approach that, "even assuming *arguendo* that all other U.S. producers of OCTG oppose the [application] (including Tenaris USA), the supporters of the [application] would still have the requisite level of support" pursuant to the 50 percent support/opinion threshold in Article 5.4.[73]

III. DETERMINATION OF INJURY

A. Cumulation

Question 15 (To Argentina): The Panel refers to Exhibit ARG-36. Please specify in which of the listed investigations the USITC ultimately did not cross-cumulate, and why (e.g. no reasonable overlap of competition).

Response:

59. This question is addressed to Argentina.

Question 16 (To both parties): Entries 97-99 in Exhibit ARG-36 refer to section 1677(7)(C)(iv) of Chapter 19 of the US Code and not to section 1677(7)(G)(i) of Chapter 19 of the US Code. For the completeness of the Panel record, can you please confirm that:

a. section 1677(7)(G)(i) of Chapter 19 of the US Code was introduced in its current form by the Uruguay Round Agreements Act;

b. the investigations listed in entries 97-99 in Exhibit ARG-36 were initiated before the entry into force of the Uruguay Round Agreements Act; and

c. when the investigations listed in entries 97-99 in Exhibit ARG-36 were initiated, section 1677(7)(C)(iv) of Chapter 19 of the US Code regulated cumulation in US anti-dumping and countervailing duty investigations?

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[71] *See* USDOC Initiation Checklist, Attachment II, at 21 (Exhibit ARG-18).

[72] *See* USDOC Initiation Checklist, Attachment II, at 7, 17-18 (Exhibit ARG-18).

[73] USDOC Initiation Checklist, Attachment II, at 7, 17-18 (Exhibit ARG-18).

To the extent both parties are in agreement with these propositions concerning municipal law, the Panel does not require the submission of separate supporting evidence.

Response:

60. The Panel's understanding is correct regarding all three sub-parts of this question. Section 771(7)(G)(i) of the Tariff Act of 1930, as amended (19 U.S.C. § 1677(7)(G)(i)) was introduced in its current form through section 222(e) the Uruguay Round Agreements Act.[74] The Uruguay Round Agreements Act took effect for AD and CVD investigations where the underlying applications seeking such investigations were filed after January 1, 1995.[75] This date corresponds to the date that the WTO Agreement entered into force for the United States.

61. In the three investigations comprising entries 97-99 in Exhibit ARG-36, the USITC reports cited by Argentina each state that the applications underlying the investigations at issue were filed prior to the effective date of the Uruguay Round Agreements Act, and thus remained subject to the substantive and procedural rules of then-pre-existing law.[76] Then-section 771(7)(C)(iv) of the Tariff Act of 1930, as amended (then-19 U.S.C. § 1677(7)(C)(iv)), first introduced in 1984, applied to these three investigations.[77]

Question 17 (To both parties): The Panel refers to Exhibit ARG-1, p. 20, footnote 95. Is the redacted language (replaced with *) a reference to the [[* * *]] for OCTG originating in the Russian Federation?**

Response:

62. This is [[* * *]].

Question 18 (To both parties): The Panel refers to Exhibit ARG-1, p. 23, footnote 116, and the redacted language therein. From the unredacted portions of the text of Exhibit ARG-1, together with other record evidence and with arguments made by the parties in their submissions[78], the Panel infers that in that footnote the USITC noted the applicant's

[74] Uruguay Round Agreements Act, sec. 222(e), Pub. L. 103-465 (Dec. 8, 1994), 108 Stat. 4809, 4873-4874 (Exhibit USA-27).

[75] *See* Uruguay Round Agreements Act, sec. 291(a)(1)(A), (b), Pub. L. 103-465 (Dec. 8, 1994), 108 Stat. 4809, 4931 (Exhibit USA-27).

[76] *Oil Country Tubular Goods from Argentina, Austria, Italy, Japan, Korea, Mexico, and Spain*, Inv. Nos. 701-TA-363-364 and 731-TA-711-717 (Final), USITC Pub. 2911, at I-4 (Aug. 1995) (Exhibit USA-28) (entry 97 in Exhibit ARG-36); *Certain Seamless Carbon and Alloy Standard, Line, and Pressure Steel Pipe from Argentina, Brazil, Germany, and Italy*, Inv. Nos. 701-TA-362 and 731-TA-707-710 (Final), USITC Pub. No. 2910, at I-3 (July 1995) (Exhibit USA-29) (entry 98 in Exhibit ARG-36); *Certain Carbon Steel Butt-Weld Pipe Fittings from France, India, Israel, Malaysia, The Republic of Korea, Thailand, The United Kingdom, and Venezuela*, Inv. Nos. 701-TA-360-361 and 731-TA-688-695 (Final), USITC Pub. No. 2870, at I-5 n.3 (Apr. 1995) (Exhibit USA-30) (entry 99 in Exhibit ARG-36).

[77] Trade and Tariff Act of 1984, sec. 612(a)(2), Pub. L. 98-573 (Oct. 30, 1984), 98 Stat. 2948, 3033 (Exhibit USA-31).

[78] See e.g. Argentina's first written submission, para. 95; United States' first written submission, para. 155.

argument that the [[* * *]] would not eliminate Russian-produced OCTG from being sold in the US market with the [[* * *]], and observed that according to the applicants, Russian producers could still sell green tubes to API-certified processors in the United States or a third country, and once those green tubes were processed, the finished OCTG could then be stenciled with the [[* * *]]. Is the Panel's inference correct?

Response:

63. This is [[* * *]].

Question 19 (To the United States): The Panel refers to tables II-12 and II-14 to II-20 contained in Exhibit ARG-1.

a. Please provide a copy of the blank questionnaires from the answers to which the data in each of these tables was sourced (the Panel has already noted Exhibits USA-5 and USA-14). Please specify, for the data in each table, which one the relevant questionnaire was.

Response:

64. The United States provides a copy of the blank purchaser questionnaire as Exhibit USA-32, the blank producer questionnaire as Exhibit USA-33, and the blank importer questionnaire as Exhibit USA-34.[79] It should be noted that firms that engaged in more than one of these activities may have received and responded to a separate questionnaire for each applicable category.

65. With regard to the tables from the USITC Final Report referenced in the Panel's question, each of these tables reflects a compilation of data collected from responses to the respective questionnaires. Four of the referenced tables pertain to responses from the U.S. purchaser questionnaires. Table II-12 in Exhibit ARG-01 is based on U.S. purchaser questionnaire responses to question III-26.[80] Table II-14 in Exhibit ARG-01 is based on U.S. purchaser questionnaire responses to question IV-3.[81] Table II-17 in Exhibit ARG-01 is based on U.S. purchaser questionnaire responses to question IV-1.[82] Table II-20 in Exhibit ARG-01 is based on U.S. purchaser questionnaire responses to question IV-2.[83]

[79] The United States previously provided relevant excerpts of the blank U.S. purchaser and U.S. importer questionnaires as Exhibits USA-05 and USA-14 to the U.S. First Written Submission, respectively.

[80] USITC Blank U.S. Purchaser Questionnaire from OCTG investigations at 19 (question III-26) (Exhibit USA-32).

[81] USITC Blank U.S. Purchaser Questionnaire from OCTG investigations at 22 (question IV-3) (Exhibit USA-32).

[82] USITC Blank U.S. Purchaser Questionnaire from OCTG investigations at 20 (question IV-1) (Exhibit USA-32).

[83] USITC Blank U.S. Purchaser Questionnaire from OCTG investigations at 21 (question IV-2) (Exhibit USA-32).

66. Two of the referenced tables pertain to responses from the U.S. producer questionnaires. Table II-15 in Exhibit ARG-01 is based on U.S. producer questionnaire responses to question IV-21.[84] Table II-18 is based on U.S. producer questionnaire responses to question IV-22.[85]

67. The final two referenced tables pertain to responses from the U.S. importer questionnaires. Table II-16 in Exhibit ARG-01 is based on U.S. importer questionnaire responses to question III-21.[86] Table II-19 is based on U.S. importer questionnaire responses to question III-22.[87]

b. If parties were given an opportunity to comment on these blank questionnaires, what was the deadline for those comments?

Response:

68. Blank Questionnaires were issued to parties for comment on January 10, 2022. Party comments on these questionnaires were originally due by February 7, 2022. Counsel to Tenaris requested an extension until February 28, 2022. The Commission granted an extension until February 15, 2022.

c. When was each of these blank questionnaires issued to parties?

Response:

69. The questionnaires were issued to market participants (*i.e.*, domestic producers, importers, foreign producers, and purchasers) on June 13, 2022. Some of the recipients were parties to the investigation, while others were not.

d. What was the deadline for the final response to each of these questionnaires?

Response:

70. The questionnaire response deadline was July 29, 2022.

e. On what date(s) were the responses to each of these questionnaires provided?

Response:

71. The earliest U.S. purchaser questionnaire response was completed and returned on June 15, 2022, and the latest was completed and returned on July 29, 2022.

Question 20 (To the United States): This question relates to the impact of the section 232 measures on imports from Russia, in the context of the United States' assessment of

[84] USITC Blank U.S. Producer Questionnaire from OCTG investigations at 58 (question IV-21) (Exhibit USA-33).

[85] USITC Blank U.S. Producer Questionnaire from OCTG investigations at 59 (question IV-22) (Exhibit USA-33).

[86] USITC Blank U.S. Importer Questionnaire from OCTG investigations at 61 (question III-21) (Exhibit USA-33).

[87] USITC Blank U.S. Importer Questionnaire from OCTG investigations at 62 (question III-22) (Exhibit USA-33).

conditions of competition for purposes of cumulation. At paragraph 158 of its first written submission, the United States argues that in response to arguments concerning that impact, the USITC had noted among other things that the measures had not prevented imports from Russia from having lower AUVs than imports from Argentina and Mexico, or from undercutting the like domestic product. The corresponding data is provided in tables V-17 and C-1 of the USITC's final determination. Please indicate where, in its reasoning on the appropriateness of cumulation, the USITC uses these price-related findings to respond to the parties' arguments on the impact of the section 232 measures on Russia.

Response:

72. The USITC did not refer explicitly to these price-related findings regarding the impact of Section 232 measures on imports of OCTG from Russia. The USITC's discussion of the Section 232 measures and their impact on such imports is principally contained at page 22, footnote 113, of the USITC Final Report. In our first written submission, the United States was pointing to additional, undisputed, record evidence that supported the USITC's finding that the Section 232 duties "did not prevent subject imports from Russia from entering the U.S. market in significant volumes throughout the [period of investigation], or from being present in the U.S. market for 38 months of the 42-month [period of investigation]."[88] In particular, the United States was providing context to this finding by noting that such significant volumes of imports from Russia behaved similarly to imports from other subject sources with respect to pricing.

Question 21 (To the United States): Exhibit ARG-1, at footnote 102 (p. 21), refers to "Table I-18-19" for the proposition that both welded and seamless OCTG can meet the specifications for most API grades. Was the reference meant to be to pages I-18 and I-19, rather than table I-18-19?

Response:

73. Yes, the Panel's understanding is correct. There are no Tables I-18 or I-19 in the USITC Final Report. The relevant passage on pages I-18 to I-19 of that report, which supports the Commission's statement at the top of page 21 prefacing footnote 102 of the report, reads: "Most API grades provide for seamless and welded production methods."[89]

Question 22 (To both parties): The Panel refers to the last two lines of p. 21 and the first two lines of p. 22 of Exhibit ARG-1, and specifically to the redacted portions therein. From the unredacted portion of the text of pp. 21-22 of Exhibit ARG-1, together with other record evidence and with arguments made by the parties in their submissions[90], the Panel infers that, in these lines, the USITC stated that domestic producers and importers of subject merchandise from the Russian Federation and the Republic of Korea primarily sold OCTG

[88] USITC Final Report at 22 n.113 (Exhibit ARG-01).

[89] USITC Final Report at I-18-I-19 (Exhibit ARG-01); *see also* U.S. First Written Submission, para. 139 n.210 (citing USITC Final Report at I-18-I-19 (Exhibit ARG-01)).

[90] See e.g. Argentina's first written submission, para. 349; United States' first written submission, para. 150.

to [[* * *]] over the POI while also selling a smaller amount to [[* * *]]; and that importers of subject merchandise from Argentina and Mexico primarily sold OCTG to [[* * *]] while also selling a smaller amount to [[* * *]]. Is the Panel's inference correct?

Response:

74. This is [[* * *]].

Question 23 (To both parties): When an authority permissibly conducts a cumulative analysis, to what extent is the authority required or allowed to consider evidence that relates to country-specific, or exporter-specific circumstances in its injury analysis?

Response:

75. Article 3.3 does not require an investigating authority to consider country-specific or exporter-specific evidence once the authority decides to conduct a cumulative analysis of the effects of subject imports from more than one country. Article 3.3 of the AD Agreement provides, in part, that an authority "may cumulatively assess" imports from all countries that are found to be dumped only if an authority determines that:

> *(a)* the amount of dumping established in relation to the imports from each country is more than *de minimis* as defined in paragraph 8 of Article 5 and the volume of imports from each country is not negligible and *(b)* a cumulative assessment of the effects of the imports is appropriate in light of the conditions of competition between the imported products and the conditions of competition between the imported products and the like domestic product.[91]

By its terms, Article 3.3 thus does not obligate, or otherwise suggest that an authority should, consider specific country or exporter evidence once it decides to cumulatively assess the effects of subject imports from more than one country. Indeed, subpart *(a)* indicates that the only time an authority must look at country-specific evidence is when it considers the amount of dumping "from each country," and the volume of imports "from each country," for the purpose of determining if it should, in the first instance, cumulatively assess the effects of subject imports in the first instance.[92]

76. As the report in *EC – Tube or Pipe Fittings (AB)* pointed out, "[a] cumulative analysis logically is premised on a recognition that the domestic industry faces the impact of the 'dumped imports' as a whole and that it may be injured by the total impact of the dumped imports, even

[91] AD Agreement, Article 3.3.

[92] *See* AD Agreement, Article 3.3.

though those imports originate from various countries."[93] That report further reasoned that absent cumulation,

> [t]he outcome may then be that, because imports from such countries could not *individually* be identified as causing injury, the dumped imports from these countries would not be subject to anti-dumping duties, even though they are in fact causing injury.… [T]herefore, by expressly providing for cumulation in Article 3.3 of the *Anti-Dumping Agreement*, the negotiators appear to have recognized that a domestic industry confronted with dumped imports originating from several countries may be injured by the cumulated effects of those imports, and that those effects may not be adequately taken into account in a country-specific analysis of the injurious effects of dumped imports.[94]

77. The plain language of Article 3.3, and the logic behind cumulation, thus indicate that it would defeat the whole purpose of cumulation if an investigating authority was required to revert, or otherwise did revert, to a de-cumulated analysis of injury after having determined that a cumulative assessment was appropriate.

B. Price Effects

Question 24 (To the United States): Please point to all the relevant parts of the USITC's determination where evidence presented by Tenaris, in particular the testimony of the Chief Commercial Officer quoted in paragraph 472 of Argentina's first written submission, that its gains in the US market were due to factors other than price, was taken into consideration.

Response:

78. The USITC directly references the testimony of Tenaris USA's Chief Commercial Officer at page 37, footnote 203, of its Final Report, where it addresses Tenaris's argument that purchasers reporting lost sales purchased subject imports due to non-price reasons.[95]

79. The USITC further considered this testimony and the associated argument that Tenaris's Rig Direct program was another known factor injuring the domestic industry at page 46 of its Final Report. The USITC determined that Tenaris's Rig Direct program did not explain the market share the domestic industry lost to subject imports.[96] It observed that "large majorities of purchasers rated domestically produced OCTG as superior or comparable to subject imports with respect to

[93] *EC – Tube or Pipe Fittings (AB)*, para. 116.

[94] *EC – Tube or Pipe Fittings (AB)*, para. 116 (italics original).

[95] USITC Final Report at 37, n.203 (Exhibit ARG-01) (the USITC references Tenaris's Posthearing Brief at 10, which includes the same quote that appears at paragraph 472 of Argentina's first written submission).

[96] USITC Final Report at 46 (Exhibit ARG-01).

both availability and technical support/service."[97] It discussed the positive evidence placed on the record by petitioners consisting of "signed declarations and supporting documentation corroborating that domestic producers in combination with their distributors provide the same services as Rig Direct."[98] The USITC also noted that the domestic industry lost market share to subject imports from all countries subject to the investigations, not just those from Argentina and Mexico that happened to be sold via Rig Direct.[99]

Question 25 (To both parties): If an investigating authority's conclusions regarding price effects are based on price undercutting, and not price suppression or depression, can that authority's decision to not reach conclusions on price suppression or depression be challenged under Article 3.1 on a stand-alone basis?[100]

Response:

80. No, an investigating authority's decision not to reach a conclusion on price suppression or price depression under Article 3.2 of the AD Agreement cannot be challenged on a stand-alone basis under Article 3.1.

81. As discussed in our first written submission,[101] the text of Article 3.2 explicitly recognizes three alternative ways in which subject imports can have an "effect" on prices: through price undercutting, through price depression, or through price suppression. The second sentence of Article 3.2 indicates, "[w]ith regard to the effect of the dumped imports on prices, the investigating authorities shall consider whether there has been a significant price undercutting by the dumped imports as compared with the price of a like product of the importing Member, or whether the effect of such imports is otherwise to depress prices to a significant degree or to prevent price increases, which otherwise would have occurred, to a significant degree."[102] The conjunctive "or" clearly indicates that each of these possible price effects constitute an independent line of inquiry and that an examination of one inquiry is sufficient to comply with the obligations of Article 3.2. As the panel in *US – Ripe Olives from Spain* reasoned, "A view that only price depression and price suppression constitute price effects would read out of the text the option to consider price undercutting as an independent channel of inquiry. This would be inconsistent with the requirement that effect be given to all terms of a treaty."[103]

82. In addition, the text of the second sentence of Article 3.2 only obligates an investigating authority to "consider" one of these possible price effects. The dictionary defines the term

[97] USITC Final Report at 46 (Exhibit ARG-01).

[98] USITC Final Report at 46 (Exhibit ARG-01), citing Applicants' Posthearing Brief at Exhibits 3 and 4 (Exhibit USA-26).

[99] USITC Final Report at 46 (Exhibit ARG-01).

[100] Argentina's first written submission, para. 443.

[101] *See* U.S. First Written Submission, paras. 201-205.

[102] AD Agreement, Article 3.2 (underline added).

[103] *US – Ripe Olives from Spain (Panel)*, para. 7.258 (footnote omitted).

"consider," in part, to mean "[l]ook at attentively … [g]ive mental attention to; think over, meditate or reflect on."[104] The term "consider" as it appears in Article 3.2 thus does not obligate an investigating authority to make an explicit determination as to whether subject imports have had an "effect" on prices through price undercutting, or through price depression, or through price suppression.[105] As the panel in *US – Ripe Olives from Spain* further noted, "[t]o 'consider' indicates a requirement that an investigating authority take something into account in reaching its decision, not a requirement to arrive at a particular conclusion."[106] The panel found additional support for this interpretation in the contrast between "consider" as used in Article 3.2 and the "more definitive term 'demonstrate'" as used in Article 3.5.[107]

83. An investigating authority's decision not to reach a conclusion on price suppression or price depression under Article 3.2 thus cannot be challenged on a stand-alone basis under Article 3.1, because the plain language of Article 3.2 confirms that: (1) an authority is not obligated to consider either price suppression or price depression if it has already considered the existence of price undercutting; and (2) the authority's obligation is to "consider" at least one of the types of effects, not to necessarily reach a conclusion.

Question 26 (To both parties): Under the heading of "Price Effects of the Subject Imports", the USITC stated that it had some evidence that domestic producers had lost sales to subject imports on the basis of price. This statement appears on page 36 of Exhibit ARG-1.[108] What was the role of this in the USITC's consideration of price undercutting?

Response:

84. The USITC's discussion of lost sales was part of its consideration of the relationship between the prices of the dumped imports and their effects on the prices of the domestic like product. The USITC found that cumulated subject imports significantly undercut the prices of domestic like products.[109] It also found that the domestic industry lost 12.0 percentage points of market share to subject imports from 2020 to 2021 – a loss entirely attributable to subject imports.[110] The USITC also examined corroborating positive evidence in detailed purchaser

[104] *The New Shorter Oxford English Dictionary*, 4th ed., L. Brown (ed.) (Clarendon Press, Oxford, 1993), Vol. 1, p. 485 (Exhibit USA-36) (definition of "consider"); *see Thailand – H-Beams (Panel)*, para. 7.161 (noting that "[t]he *Concise Oxford Dictionary* defines 'consider' as, *inter alia*: 'contemplate mentally, especially in order to reach a conclusion'; 'give attention to'; and 'reckon with; take into account'").

[105] *See China – GOES (AB),* para. 130 ("the word 'consider' … do[es] not impose an obligation on an investigating authority to make a *definitive determination* on the volume of subject imports and the effect of such imports on domestic prices" (italics original)).

[106] *US – Ripe Olives from Spain (Panel)*, para. 7.229 (footnote omitted).

[107] *US – Ripe Olives (Panel)*, para. 7.229; *see China – GOES (AB)*, para. 130, n.217.

[108] See also Final determination, public version (Exhibit ARG-01), pp. 37 and 39.

[109] USITC Final Report at 36 (citing Table V-17) (the USITC found that "[u]nderselling by cumulated subject imports predominated during each year of the POI and interim 2022") (Exhibit ARG-01)

[110] USITC Final Report at 36 (Exhibit ARG-01).

reports that the domestic industry had lost sales to subject imports, primarily due to price.[111] The USITC summarized its findings regarding significant price underselling as follows:

> Given the moderate-to-high degree of substitutability between cumulated subject imports and the domestic like product, the importance of price in purchasing decisions, and the predominant underselling by subject imports, both in quarterly comparisons and by volume, we find that subject import underselling was significant during the POI. Underselling by cumulated subject imports led to subject imports gaining … market share from the domestic industry from 2020 to 2021.[112]

85. In sum, the role of the "some evidence" of lost sales to subject imports on the basis of price served to corroborate the USITC's detailed consideration of price effects, including the relationship between cumulated subject imports' price undercutting and U.S. market share trends (considered in the context of applicable conditions of competition).[113] That said, as explained below in response to Question 27, the USTIC was not obligated under Article 3.2 of the AD Agreement to consider lost sales as part of its consideration of price undercutting.

Question 27 (To both parties): Is an analysis of lost sales or market share required as part of an analysis of price undercutting under Article 3.2?

Response:

86. Article 3.2 of the AD Agreement does not obligate an investigating authority to consider lost sales or market share as part of its consideration of price undercutting.

87. Article 3.2 states, in part, "[w]ith regard to the effect of the dumped imports on prices, the investigating authorities shall consider whether there has been a significant price undercutting by the dumped imports as compared with the price of a like product of the importing Member."[114] The text of Article 3.2 thus does not indicate that an investigating authority must consider "lost sales" or "market share" when it considers whether the observed price undercutting is significant or not. In fact, as explained in our first written submission, an investigating authority is not required by Articles 3.1 and 3.2 to follow a particular methodology when it considers the price effects of dumped imports.[115]

88. The United States further notes that Article 3.2 does, in another context, exemplify when an investigating authority shall consider "market share." The first sentence of Article 3.2 indicates that an investigating authority shall consider "whether there has been a significant increase in

[111] USITC Final Report at 36-37 (Exhibit ARG-01).

[112] USITC Final Report at 37 (Exhibit ARG-01).

[113] *See* USITC Final Report at 36-38 (Exhibit ARG-01).

[114] AD Agreement, Article 3.2 (second sentence).

[115] U.S. First Written Submission, paras. 180, 205.

dumped imports, either in absolute terms or relative to production or consumption"[116] (*i.e.*, in the context of market share). This text thus illustrates that the negotiators knew exactly how to draft text that would indicate that an authority must consider "market share" (or other factors like "lost sales) as part of its injury assessment. That the negotiators did not incorporate similar language in the second sentence of Article 3.2 in regard to an investigating authority's consideration of price undercutting thus further confirms that an authority is not required to consider "market share" or "lost sales" as part of that assessment.

C. Impact on the Domestic Industry

Question 28 (To both parties): Is there a requirement under Article 3.4 to consider the *reasons* for lost sales or market share?

Response:

89. No, there is no requirement under Article 3.4 of the AD Agreement for an investigating authority to consider "the reasons" for lost sales or market share.

90. As explained in the U.S. first written submission, Article 3.4 only requires "an evaluation of all relevant economic factors and indices having a bearing on the state of the industry."[117] In contrast, Article 3.5 requires an assessment of the "causal relationship between the dumped imports and the injury to the domestic industry."[118] Accordingly, it is Article 3.5 that requires an examination of "the reasons" for injury (*i.e.*, causation) to the domestic industry.

91. Article 3.4 does direct an investigating authority to evaluate "market share" as one of the factors having a bearing on the state of the domestic industry.[119] The USITC considered market share in its examination of the domestic OCTG industry's condition, stating:

> Consistent with the substantial decrease in apparent U.S. consumption from 2019 to 2020 due to the effects of the COVID-19 pandemic, the domestic industry's performance significantly weakened during that period. As apparent U.S. consumption increase 32.2 percent from 2020 to 2021, however, the domestic industry's performance showed little if any improvement, as cumulated subject imports captured market share from the industry and prevented it from fully capitalizing on the strong recovery in demand.[120]

[116] AD Agreement, Article 3.2 (first sentence) (underline added).

[117] AD Agreement, Article 3.4; *see* U.S. First Written Submission, paras. 233-237, 243-247.

[118] AD Agreement, Article 3.5; *see* U.S. First Written Submission, paras. 276-277.

[119] AD Agreement, Article 3.4.

[120] USITC Final Report at 40 (citing Table IV-19) (Exhibit ARG-01).

92. The USITC further considered trends in the domestic industry's market share relative to apparent U.S. consumption, observing that:

> The domestic industry's share of apparent U.S. consumption decreased by 8.2 percentage points from 2019 to 2021, increasing from 56.7 percent in 2019 to 60.4 percent in 2020, before decreasing to 48.4 percent in 2021; its share of apparent U.S. consumption was 0.6 percentage points greater in interim 2022, at 51.2 percent, than in interim 2021, at 50.6 percent.[121]

D. Causation in General

Question 29 (To Argentina): In relation to Argentina's argument at paragraph 632 of its first written submission, did Tenaris submit any argumentation/evidence during the investigation to advocate for a collective examination of the impact of alleged other causal factors? If so, please identify where this can be found in the record material.

Response:

93. This question is addressed to Argentina.

E. Russia/Saudi Oil Price War

Question 30 (To Argentina): Argentina states that "[r]ecord evidence established that demand for OCTG fell early in the POI because of the Russia/Saudi oil price/supply war".[122] Did the record evidence indicate whether this factor affected the domestic industry differently to how it impacted imports?

Response:

94. This question is addressed to Argentina.

F. Raw Material Costs

Question 31 (To Argentina): When arguing that increased raw material costs (constraining US supply) qualified as a factor other than the dumped imports, did Tenaris establish that seamless OCTG could not be used in place of welded OCTG in all applications? Please point to the relevant record evidence.

Response:

95. This question is addressed to Argentina.

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[121] USITC Final Report at 41 (citing Table IV-19) (Exhibit ARG-01).

[122] Argentina's first written submission, para. 525.

Question 32 (To both parties): Other than the witness testimony referenced in footnote 156 of applicants' post-hearing comments (Exhibit ARG-30), does the record evidence show whether US producers of welded OCTG were able to pass on increased hot-rolled coil costs in relation to sales of other steel products?

Response:

96. The ability of U.S. producers of welded OCTG to pass on increased hot-rolled coil costs in relation to sales of non-OCTG products is not relevant to the evaluation of economic factors and indices having a bearing on the state of domestic OCTG industry. For this reason, because the USITC's investigation focused on the domestic producers' OCTG operations, the USITC did not collect data about whether U.S. producers of welded OCTG passed on the cost of hot-rolled coil to sales of other steel products.[123]

97. Welded OCTG producers correctly reported commercial and financial data just with respect to their OCTG operations. That said, in an effort to be fully responsive to the Panel's question, the United States notes that the following U.S. producers indicated in sworn testimony that they were able to pass on hot-rolled coil costs in relation to sales of other steel products:

- Mr. Mandel, Welded Tube: "In our other business segment, which we call Industrial, spreads were good, with prices increasing more than coil costs. In contrast to the situation with OCTG, the dramatic increase in hot-rolled coil prices in late 2020 and much of 2021 were more than passed on by our Industrial Division."[124]

- Mr. Hart, PTC: "As mentioned, PTC is in the mechanical business. We use the same types of hot-rolled steel coil as raw material as PTC Liberty Tubulars does. As steel prices rose in 2020 and 2021, we increased our mechanical tube prices and maintained our margins. In OCTG, we couldn't do this."[125]

- Mr. Johnson, Borusan: "We never stopped production. In fact, just like the other producers explained, … we couldn't pass on the coil costs that increased during that time on OCTG market, but we pivoted to standard pipe. We pivoted to piling pipe, construction pipe, and we were able to continue operations."[126]

- Mr. Croix, Borusan: "We weren't able to actually … be whole on those costs, and so we continued to work on a single shift basis and fill some of our capacity. We had to fill with other products, such as standard pipe, structural pipe, piling, things of that nature, where those industries or the products for those industries were …

[123] *See e.g.*, USITC Blank U.S. Producer Questionnaire from OCTG investigations at question I-2a; II-2a; II-2b; II-3a, note; II-7–17; III-9a – III-9d; III-12a–III-13a (Exhibit USA-33).

[124] USITC Hearing Transcript at 27 (Exhibit ARG-06).

[125] USITC Hearing Transcript at 32 (Exhibit ARG-06).

[126] USITC Hearing Transcript at 78 (Exhibit USA-38).

the steel prices could be recovered, the increase in steel prices, because we weren't dealing with unfairly traded imports in those products."[127]

G. Intra-Industry Competition

Question 33 (To Argentina): If intra-industry competition during the POI involved Tenaris' use of dumped imports to supplement its US-produced OCTG sales, can this qualify as a factor "*other than* the dumped imports"?

Response:

98. This question is addressed to Argentina.

Question 34 (To the United States): Article 3.5 lists, as factors other than the dumped imports, "developments in technology" and "changes in the patterns of consumption". Do these examples indicate that it is possible that the features or characteristics of dumped goods, or of the way in which they are marketed and sold, could qualify as a factor "other than the dumped imports" in a given case?

Response:

99. The factors "developments in technology" and "changes in the patterns of consumption" do not indicate that features or characteristics of dumped goods, or the way in which dumped goods are marketed and sold, might be able to qualify as a factor "other than dumped imports" under Article 3.5 of the AD Agreement.

100. The text of Article 3.5 is explicit: It states that an investigating authority "shall also examine any known factors other than the dumped imports which at the same time are injuring the domestic industry."[128] The reference to "other than dumped goods" confirms then that the authority's examination of other known factors does not require an examination of factors relating to the dumped imports. Accordingly, "the features or characteristics of dumped goods" or "the way in which [dumped goods] are marketed and sold" do not qualify as "known factors other than the dumped imports" under the plain language of Article 3.5.

Question 35 (To the United States): According to footnote 584 of the United States' first written submission, "it is nonsensical to insist that the domestic industry's loss of market share resulted from the industry taking market share from itself". Is it the position of the United States that injury caused by the US production of one member of the domestic industry out-competing other members of the domestic industry cannot qualify as a factor "other than the dumped imports" in a given case?

[127] USITC Hearing Transcript at 162 (Exhibit USA-38).

[128] AD Agreement, Article 3.5 (underline added).

Response:

101. An investigating authority could under certain circumstances examine whether intra-industry competition is a known factor other than the dumped imports under Article 3.5 of the AD Agreement. That said, a domestic industry's loss of market share cannot result from the industry taking market share from itself.

102. Article 3 of the AD Agreement entails an examination of the relationship between dumped imports and the "domestic industry" (*i.e.*, the "domestic producers of the like product"). Once an investigating authority under Article 4.1 of the AD Agreement defines which domestic producers are part of the domestic industry, the authority must conduct an examination of the impact and possible causal link between the dumped imports and the domestic industry.[129] Market share is assessed based on the domestic industry as defined under Article 4.1 relative to subject imports and nonsubject imports.

103. In the OCTG investigations, the USITC found a causal nexus between the increasing volume of cumulated subject imports, the significant underselling of cumulated subject imports, the domestic industry's loss of market share to subject imports from 2020 to 2021, and the domestic industry's weaker-than-expected performance in light of increasing demand.[130] As the USITC explained:

> Subject import volume increased significantly in absolute terms and relative to apparent U.S. consumption from 2020 to 2021, driven by significant subject import underselling, capturing 12.0 percentage points of market share from the domestic industry during the period. Consequently, despite the 32.2 percent increase in apparent U.S. consumption from 2020 to 2021, the industry's production, employment, and financial performance remained weaker in 2021 than would have been expected in light of the strong increase in demand.[131]

The domestic industry's loss of market share was integral to the USITC's affirmative injury determinations, as the USITC explicitly concluded that the entirety of the domestic industry's lost market share went to cumulated subject imports.[132]

104. The statement at footnote 584 of the U.S. first written submission highlights that in an investigation such as the OCTG investigations, where the authority has found that "circumstances do not exist to exclude any firm from the domestic industry,"[133] it is mathematically impossible

[129] AD Agreement, Articles 3.4 and 3.5.

[130] *See* U.S. First Written Submission, paras. 275-316.

[131] USITC Final Report at 43 (Exhibit ARG-01).

[132] *See* USITC Final Report at 36, 43-44 (Exhibit ARG-01).

[133] USITC Final Report at 16 (Exhibit ARG-01).

for the domestic industry to take market share from itself. In such a situation, the market share pie is limited to three data points: the market share held by the domestic industry, the market share held by subject imports, and the market share held by nonsubject imports.[134] All domestic producers' sales of domestically produced like product collectively contribute to the domestic industry's market share. Domestic producer 'A' can, of course, out-compete domestic producer 'B' and thereby take market share from domestic producer 'B'. But the overall domestic industry's market share remains the same: All that has changed is the internal allocation of the domestic industry's slice of the market share pie, which shows an internal shift from producer 'B' to producer 'A'. In other words, where no domestic entity is excluded from the domestic industry, a loss in the domestic industry's market share can only happen where a portion of its market share pie is lost to subject imports, nonsubject imports, or a combination thereof. In sum, re-allocation of market shares among domestic producers cannot, in and of itself, constitute a loss of domestic market share.

Question 36 (To Argentina): Tenaris seemed to suggest at page 74 of its prehearing brief (Exhibit ARG-4), that "subject imports from Argentina and Mexico did not exert significant depressing or suppressing effects on domestic OCTG prices during the POI" due to "Tenaris' one price policy". Does this mean that Tenaris' own import prices did not impact its own domestic prices in the US market, or does it mean that Tenaris' import prices did not impact domestic prices of US producers generally?

Response:

105. This question is addressed to Argentina.

Question 37 (To the United States): At paragraph 294 of its first written submission, the United States refers to the USITC's finding that "large majorities of purchasers rated the availability and reliability of domestically produced OCTG superior or comparable to that of subject imports". Please explain how this finding relates to the consideration at p. V-38 of the USITC's final determination that "[p]urchasers identified availability generally or of specific products as non-price reasons for purchasing imported rather than U.S.-produced product".

Response:

106. The statement that appears at paragraph 294 of the U.S. first written submission echoes statements found on pages 28 and 44 of the USITC Final Report.[135] These statements were based on consideration of the responses of *all responding purchasers* in the U.S. OCTG market

[134] *See, e.g.*, USITC Final Report at 27-29 and Table IV-19 (conditions of competition – supply considerations) (Exhibit ARG-01).

[135] USITC Final Report at 28 and 44 (citing Table II-14) (Exhibit ARG-1).

concerning their impressions of OCTG products from different sources across 15 purchasing factors, including availability and reliability of supply.[136]

107. In contrast, the statement that appears on page V-38 of the Staff Report refers to the responses of certain *individual purchasers* who reported purchasing subject imports due to, in part, difficulty obtaining domestically produced product in specific transactions. These same purchasers would have been included in the tally of the impressions of all purchasers on the relative availability of domestically produced and subject OCTG, the majority of which reported that "the availability and reliability of domestically produced OCTG [was] superior or comparable to that of subject imports."[137]

Question 38 (To Argentina): Argentina argues that the USITC did not properly assess Rig Direct as an other causal factor. With reference only to Tenaris' sales of US-produced OCTG, please explain exactly the mechanism through which Argentina (and Tenaris before the USITC) is arguing that Rig Direct operated as an other causal factor. Please answer with reference to evidence from the record of the investigation.

Response:

108. This question is addressed to Argentina.

Question 39 (To Argentina): With reference to evidence from the record of the investigation, please substantiate how competition from Tenaris' production in the United States operated to contribute to the overall finding of injury to the US industry.

Response:

109. This question is addressed to Argentina.

H. Inventory Levels

Question 40 (To both parties): In relation to the "inventory overhang" alleged by Tenaris, did the USITC find that it did not exist, or that it did exist but was not injurious, or something else? Please identify the passages of the USITC's final determination supporting your answer.

[136] USITC Final Report at Table II-14 (Exhibit ARG-1).

[137] USITC Final Report at 28 and Table II-14 (Exhibit ARG-01). For example, Table II-14, at page II-32, indicates that 19 out of 21 purchasers comparing U.S. product to Argentina imports considered the availability of the U.S. product superior or comparable to the Argentina imports.

Response:

110. The USITC discussed the issue of inventory overhang as alleged by Tenaris on pages 45-46 of the Final Report and found that, to the degree it may have existed, it was not injurious.[138]

111. The USITC examined two sets of inventory data as part of its examination of Tenaris's assertion that the drawdown of inventory overhangs caused the market share shift to subject imports: (1) Tenaris's preferred inventory data, which showed that there was an inventory overhang that had been drawn down prior to the end of 2020;[139] and (2) the inventory data contained in the Final Report, which showed that inventories were relatively consistent and suggested *no massive draw down of inventory*.[140] The USITC thus recognized that Tenaris's data – but not other inventory data – showed an inventory drawdown, but found that even this alleged drawdown occurred before 2021, *i.e.*, before the domestic industry lost major market share to subject imports.[141]

Question 41 (To the United States): The USITC stated that "to the extent that inventory overhangs were causing supply constraints, this issue would affect domestic OCTG and imports alike, including subject imports."[142] Can the United States elaborate on why inventory overhangs would be expected to have a similar impact on both domestic and imported OCTG sales in the circumstances of the present case?

Response:

112. As discussed in response to Question 40, the only dataset that showed an inventory overhang and drawdown at any point during the POI was Tenaris's database. But this database, as the USITC noted, failed to "distinguish where in the supply chain the inventories are held. Thus, the record does not establish whether inventory increases necessarily affected domestic producers' customers more than they affected Tenaris and its customers."[143]

113. In addition, the USITC observed that, as apparent U.S. consumption increased by 32.2 percent from 2020 to 2021, the volume of cumulated subject imports surged by 135.6 percent in 2021, while the domestic industry's production and shipments grew by just 16.9 percent and 6.0 percent, respectively.[144] The USITC also discussed that the increase in subject import volume was

[138] USITC Final Report at 45-46 (Exhibit ARG-01).

[139] USITC Final Report at 45 (Exhibit ARG-01). *See* USITC Final Report at 45 n.254 (noting that "industry witnesses indicated that inventory levels were normalized by the fourth quarter of 2020").

[140] USITC Final Report at 45 (Exhibit ARG-01). Unlike Tenaris's database, the USITC database included inventories held by distributors and end users. *Ibid*.

[141] USITC Final Report at 45 (Exhibit ARG-01).

[142] Final determination, public version (Exhibit ARG-01), p. 45.

[143] USITC Final Report at 45 n.255 (citing Tenaris's Prehearing Br. Exh. 42) (Exhibit ARG-01).

[144] USITC Final Report at 45 (Exhibit ARG-1). In 2021, nonsubject import volume also grew at a lesser rate than apparent U.S. consumption. *Ibid*. at 44.

driven by significant volume increases from all countries subject to the OCTG investigations, undercutting Tenaris's argument that the Rig Direct program explained these drastically different trends.[145] Therefore, as the USITC correctly concluded, to the extent there did exist an inventory overhang before the end of 2020, such an overhang would be expected to have a similar impact on both domestic *and* imported OCTG sales.

Question 42: Argentina states that "[w]hen distributors faced record high inventories following the COVID-related market collapse, which in turn delayed the production ramp-up of other domestic producers, Tenaris' lean inventory ensured that it was able to flexibly respond to growing demand", and that "[t]he USITC did not acknowledge this contrary evidence".[146]

a. (To Argentina): What evidence did Tenaris rely upon to substantiate that it had been able to increase its domestic production more quickly than other US producers when demand began to accelerate?

Response:

114. This question is addressed to Argentina.

b. (To the United States): Did the USITC collect data or evidence relevant to Tenaris' assertion that its domestic production accelerated more quickly than that of other US producers? If so, please identify where such evidence or data is set out or evaluated in the USITC's final determination.

Response:

115. The USITC collected data relevant to Tenaris's assertion from its U.S. producer questionnaire response, which included information about Tenaris's domestic OCTG production and its U.S. shipments of domestically produced OCTG.[147] However, Article 3 of the AD Agreement obligates an investigating authority to examine the impact of dumped imports on the domestic industry as a whole, not on individual domestic producers.[148] Therefore, as explained above in our response to Question 35, even if Tenaris was able to increase its domestic production and shipments at a greater rate than other domestic producers in 2021, such an increase would not result in a loss of market share *to the domestic industry*.

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[145] USITC Final Report at 45-46 and 46 n.258 (citing Table C-1) (noting that "an inventory overhang held by distributors would have included subject imports from Russia and South Korea and impacted them in the same manner as domestic producers") (Exhibit ARG-01).

[146] Argentina's first written submission, paras. 584 and 587.

[147] *See* USITC Blank U.S. Producer Questionnaire from OCTG investigations at question II-3a and II-7 (Exhibit USA-33); *see also* USITC Final Report at III-12 and Tables III-7, III-8, III-13 (Exhibit ARG-01).

[148] *See* AD Agreement, Articles 3.1 and 3.5 (indicating that the focus of an injury determination is injury to the domestic industry caused by subject imports); *see also* USITC Final Report at 40-43 (citing Tables III-8–9, III-13–14, III-17–18, III-26–27, III-32, IV-19, VI-1, VI-16, VI-18, VI-21, VI-23–24, C-1) (Exhibit ARG-01).

I. Post-Application Effects

Question 43 (To the United States): Can the United States please elaborate on the rationale for attributing improved trends for the domestic industry to the filing of the applications in the circumstances of this case? Specifically, please comment on any feature of US law that may operate as an incentive to investigated exporters to change their behaviour after the filing of an application and before the imposition of provisional measures.

Response:

116. The USITC noted that the data showed a "marked decrease in the intensity of subject import competition for market share" in interim 2022 (after the applications were filed) relative to interim 2021 (before the applications were filed).[149] The USITC also noted that during interim 2022, USDOC had issued its preliminary affirmative determinations regarding Argentina, Mexico, and Russia.[150] As a result of USDOC's preliminary affirmative determinations, provisional duties had been imposed on subject imports from these countries.[151] Given the decline in subject import market penetration following the filing of the applications and subsequent imposition of provisional duties, the USITC reasonably found that this positive evidence indicated that the decline in subject import market share in interim 2022 relative to interim 2021 was related to the pendency of the investigations and accordingly placed less weight on the interim 2022 market share data in determining that the volume of imports was significant.[152] This finding is such as could have been reached by an unbiased and objective investigating authority.

117. Likewise, in discussing the impact of subject imports on the domestic industry, the USITC found it "instructive that the domestic industry was able to improve its performance markedly in interim 2022 compared to interim 2021 after the filing of the petitions in October 2021."[153] The USITC explained that "subject imports competed less aggressively in the U.S. market after the filing of the petitions," losing a certain percentage point of market share "as the domestic industry gained 0.6 percentage points of market share in interim 2022 compared to interim 2021."[154] According to the USITC, "[c]onsequently, the domestic industry was able to more fully capitalize on the 70.6 percent increase in apparent U.S. consumption in interim 2022 compared to interim

[149] USITC Final Report at 32-33 n. 184 (Exhibit ARG-01).

[150] USITC Final Report at 32-33 n. 184 and Appendix A (Exhibit ARG-01).

[151] *See, e.g., Oil Country Tubular Goods From Argentina: Preliminary Affirmative Determinations of Sales at Less Than Fair Value and Critical Circumstances, Postponement of Final Determination, and Extension of Provisional Measures*, 87 Fed. Reg. 28,801, 28,802 (May 11, 2022) (Exhibit ARG-24). The USITC referenced the USDOC's preliminary affirmative determinations at USITC Final Report at Appendix A (Exhibit ARG-01).

[152] USITC Final Report at 32 n.184 (Exhibit ARG-01).

[153] USITC Final Report at 43 (Exhibit ARG-01). One USITC Commissioner, Commissioner Schmidtlein, agreed "that the filing of the petitioners and the pendency of the investigations had an effect on the data (and thus she accords less weight to the interim data), [but] she does not find the effect on the data to be evidence of present material injury." USITC Final Report at 43 n.245 (Exhibit ARG-01).

[154] USITC Final Report at 43 (Exhibit ARG-01).

2021 and improved its performance by nearly every measure between the interim periods."[155] A majority of the USITC Commissioners attributed these improvements in the domestic industry's performance to the filing of the applications for trade remedy relief.[156] This finding too is such as could have been reached by an unbiased and objective investigating authority.

118. The initiation of trade remedy investigations "can create an artificially low demand for subject imports, thereby distorting post-petition data compiled by the Commission."[157] Likewise, "[t]he imposition of provisional duties, in particular, can cause a reduction in import volumes and an increase in prices of both the subject imports and the domestic product."[158] In such instances, as was the case in the OCTG investigations, an unbiased and objective investigative authority could reasonably determine to give less weight to data pertaining to the period after the filing of an application for trade remedy relief and find that improvements in the domestic industry's condition during the investigations related to the pendency of the investigations.

Question 44 (To both parties): Argentina contends that the domestic industry's improved performance was a continuing trend prior to the filing of the applications[159], whereas the United States contends that the USITC properly found that the domestic industry's performance improved after the filing of the applications.[160] Please set out clearly which trends do – or do not – correlate to: (a) the filing of the applications; and (b) improvements in the domestic industry's performance predating the filing of the applications.

Response:

119. Argentina's argument is based on the false premise that any pre-application improvement in any of the domestic industry's metrics precludes a finding of material injury caused by unfairly trade imports.[161] Under this false premise, it would be nearly impossible to determine if a domestic industry is injured by subject imports during a period of strong demand growth.

120. The USITC, consistent with the obligations set forth under Article 3 of the AD Agreement, performed a thorough analysis that accounts for not just the direction, but also the magnitude, of these trends, and concluded its analysis of the domestic industry's performance during the POI as follows:

[155] USITC Final Report at 43 (Exhibit ARG-01).

[156] USITC Final Report at 43 (Exhibit ARG-01); *see* U.S. First Written Submission, paras. 280, 285.

[157] Statement of Administrative Action to the Uruguay Round Agreements Act, H.R. Rep. No. 103-316, Vol. I at 854 (1994) (Exhibit USA-37).

[158] Statement of Administrative Action to the Uruguay Round Agreements Act, H.R. Rep. No. 103-316, Vol. I at 854 (1994) (Exhibit USA-37).

[159] Argentina's first written submission, paras. 61 and 260.

[160] United States' first written submission, para. 285.

[161] *See, e.g.,* Argentina's first written submission, paras. 57-61, 257-260.

> We find a causal nexus between cumulated subject imports and the domestic industry's weak performance relative to the strong growth in apparent U.S. consumption from 2020 to 2021. Subject import volume increased significantly in absolute terms and relative to apparent U.S. consumption from 2020 to 2021, driven by significant subject import underselling, capturing 12.0 percentage points of market share from the domestic industry during the period. Consequently, despite the 32.2 percent increase in apparent U.S. consumption from 2020 to 2021, the industry's production, employment, and financial performance remained weaker in 2021 than would have been expected in light of the strong increase in demand.[162]

121. As the positive evidence of record clearly demonstrates, the domestic industry's production, employment, and financial performance did not improve to the degree expected given apparent U.S. consumption in 2021 (before the filing of the applications) and only improved to the degree it otherwise should have – given apparent U.S. consumption – once subject imports started to compete less aggressively in the U.S. market in interim 2022 (after the filing of the applications):

- *Before the applications*: The domestic industry's **operating losses** decreased from $659.3 million in 2020 to $254.9 million in 2021. Although the 2021 figure represents an improvement, it still constitutes a massive operating loss. *After the applications*: Subject imports competed less aggressively in the U.S. market and the domestic industry had an operating income of $508.3 million in interim 2022, compared to an operating loss of $236.3 million in interim 2021.[163]

- *Before the applications*: The industry's **ratio of operating income to net sales** changed from a negative 30.6 percent in 2020 to a negative 8.8 percent in 2021. A statistical improvement, but unsustainable from a business standpoint. *After the applications*: The industry's ratio of operating income to net sales was 16.4 percent in interim 2022 as subject imports competed less aggressively in the U.S. market, compared to negative 21.9 percent in interim 2021.[164]

- *Before the applications*: **U.S. mills' capacity utilization** increased from 23.9 percent in 2020, before increasing to 27.6 percent in 2021 (less than one half the rate of increase of

[162] USITC Final Report at 43 (Exhibit ARG-01); *see* USITC Final Report at 40 ("As apparent U.S. consumption increased 32.2 percent from 2020 to 2021, however, the domestic industry's performance showed little if any improvement, as cumulated subject imports captured market share from the industry and prevented it from fully capitalizing on the strong recovery in demand") (footnote omitted) (Exhibit ARG-01).

[163] USITC Final Report at 42 (citing Table VI-1) (Exhibit ARG-01).

[164] USITC Final Report at 42 (citing Table VI-1) (Exhibit ARG-01).

apparent U.S. consumption). *After the applications*: Capacity utilization was still low in interim 2022 at 39.7 percent, albeit higher than in interim 2021 at 23.6 percent.[165]

- *Before the applications*: **U.S. mills' capacity** increased from 6.5 million short tons in 2020 to 6.6 million short tons in 2021 (an increase of only 1.5 percent – a tiny fraction of the rate of increase in apparent U.S. consumption). *After the applications*: Capacity was higher in interim 2022 at 3.6 million short tons than in interim 2021 at 3.3 million short tons.[166]

- *Before the applications*: **U.S. mills' production** was 1.6 million short tons in 2020 and increased to 1.8 million short tons in 2021 (about 1/3rd of the rate of increase in apparent U.S. consumption). *After the applications*: Production was higher in interim 2022, at 1.4 million short tons, than in interim 2021, at 777,294 short tons.[167]

- *Before the applications*: **Employment** (production and related workers ("PRWs")) increased from 4,728 PRWs in 2020 to 4,779 PRWs in 2021 (an increase of only 1.1 percent – a tiny fraction of the rate of increase in apparent U.S. consumption). *After the applications*: Employment was greater in interim 2022, at 6,118 PRWs, than in interim 2021, at 4,128 PRWs.[168]

- *Before the applications*: **Total hours worked** increased from 11.0 million hours in 2020 to 11.3 million hours in 2021 (an increase of only 2.2 percent – a tiny fraction of the rate of increase in apparent U.S. consumption). *After the applications*: They were greater in interim 2022, at 8.3 million hours, than in interim 2021, at 5.3 million hours.[169]

- *Before the applications*: **Wages paid** increased from $347.7 million in 2020 to $378.0 million in 2021 (an increase of 8.7 percent – about 1/4th the rate of increase in apparent U.S. consumption). *After the applications*: They were greater in interim 2022, at $276.8 million, than in interim 2021, at $165.1 million.[170]

- *Before the applications*: **U.S. mills' U.S. shipments** increased from 1.6 million short tons in 2020 to 1.7 million short tons in 2021 (an increase of 6.3 percent – about 1/5th the rate of increase of apparent U.S. consumption). *After the applications*: They were higher in interim 2022, at 1.2 million short tons, than in interim 2021, at 719,001 short tons.[171]

[165] USITC Final Report at 40 (citing Table III-8) (Exhibit ARG-01).

[166] USITC Final Report at 40 (citing Table III-8) (Exhibit ARG-01).

[167] USITC Final Report at 40 (citing Table III-8) (Exhibit ARG-01).

[168] USITC Final Report at 41 n.225 (see Table III-28) (Exhibit ARG-01).

[169] USITC Final Report at 41 n.226 (see Table III-28) (Exhibit ARG-01).

[170] USITC Final Report at 41 n.227 (see Table III-28) (Exhibit ARG-01).

[171] USITC Final Report at 41 (citing Table III-13) (Exhibit ARG-01).

- *Before the applications*: The domestic industry's **share of apparent U.S. consumption** *decreased* from 60.4 percent in 2020 to 48.4 percent in 2021. *After the applications*: Share of apparent U.S. consumption was 0.6 percentage points greater in interim 2022, at 51.2 percent, than in interim 2021, at 50.6 percent (albeit, nowhere the 60.4 percent share in 2020).[172]

- *Before the applications*: U.S. mills' **end-of-period inventories** increased from 176,106 short tons in 2020 to 228,092 short tons in 2021 (a rate less than the increase of apparent U.S. consumption). *After the applications*: They were higher in interim 2022, at 334,664 short tons, than in interim 2021, at 192,099 short tons.[173]

- *Before the applications*: The industry's total **net sales revenues** increased from $2.2 billion in 2020 to $2.9 billion in 2021. *After the applications*: They were higher in interim 2022, at $3.1 billion, than in interim 2021, at $1.1 billion.[174]

- *Before the applications*: The domestic industry's **gross profit** increased from a negative $370.0 million in 2020 to a positive $59.2 million in 2021. *After the applications*: The industry had a gross profit of $700.2 million in interim 2022, compared to a gross loss of $99.6 million in interim 2021.[175]

- *Before the applications*: **Productivity** for U.S. mills (as measured in short tons per 1,000 hours) increased from 211.4 in 2020 to 253.8 in 2021 (a rate less than the rate of increase of apparent U.S. consumption). *After the applications*: Productivity was higher in interim 2022, at 264.2, than in interim 2021, at 229.0.[176]

122. In sum, before the applications were filed, many – but not all – of the domestic industry's performance metrics showed slight improvements from 2020 to 2021. That said, the domestic industry's capacity, production, capacity utilization, employment, total hours worked, wages paid, U.S. shipments, and end-of-period inventories increased at a much smaller rate than apparent U.S. consumption. The domestic industry's share of apparent U.S. consumption also *decreased* during this period, and the industry still suffered from a massive operating loss and a negative ratio of operating income to net sales. In stark contrast, after the applications were filed, all of the domestic industry's performance metrics (except productivity) increased to a greater degree in interim 2022 than they did during 2020 to 2021. Therefore, the USITC's finding of a causal nexus between dumped imports and the domestic industry's weak performance relative to the strong growth in apparent U.S. consumption from 2020 to 2021 is such as could have been reached by an unbiased and objective investigating authority.

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[172] USITC Final Report at 41 (citing Table IV-19) (Exhibit ARG-01).

[173] USITC Final Report at 41-42 (citing Table III-17) (Exhibit ARG-01).

[174] USITC Final Report at 42 (citing Table VI-1) (Exhibit ARG-01).

[175] USITC Final Report at 42 n.235 (citing Table VI-1) (Exhibit ARG-01).

[176] USITC Final Report at 41 (citing Table III-26) (Exhibit ARG-01).

J. Labour Shortages

Question 45 (To the United States): Please elaborate on what the USITC found in relation to labour shortages (constraining US supply) as an alleged factor other than the dumped imports. For instance, did the USITC find that labour shortages did not exist, or that they did exist but did not constrain US supply, or something else? Please identify the passages of the USITC's final determination supporting your answer.

Response:

123. The USITC found that labor shortages did not exist, as discussed on pages 46-47 of the Final Report.[177] It acknowledged Tenaris's argument that labor shortages had constrained domestic production,[178] but found that positive evidence belied Tenaris's contention, observing that domestic industry witnesses reported in sworn testimony that they were capable of hiring as needed.[179] It found that these witness statements were buttressed by the employment data on the record, which further showed that "the domestic industry sharply expanded employment in interim 2022, after the filing of the petitions caused subject imports to compete less aggressively in the U.S. market."[180]

[177] USITC Final Report at 46-47 (Exhibit ARG-01).

[178] USITC Final Report at 46 (citing Tenaris's Prehearing Br. at 24–27) (Exhibit ARG-01).

[179] USITC Final Report at 46-47 (citing CR/PR at II-13 ("U.S. producer *** reported adding additional labor as demand increased"); Hrg Tr. at 67 (Beltz) ("[w]e had the people. We had the availability"); Hrg Tr. at 68 (Dorn) ("we started up our electric arc furnace in October of 2020, and we hired 150 people during that time frame … and we also hired employees throughout our production facilities through this timeframe")). (Exhibit ARG-01).

[180] USITC Final Report at 46-47 (Exhibit ARG-01). The domestic industry's employment data for mills and processors is found at USITC Final Report at Tables III-26–III-28 (Exhibit ARG-01).